



# KUWAIT

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## A VICTORY TURNED SOUR

### Human Rights in Kuwait Since Liberation

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*Human Rights Watch/Middle East (formerly Middle East Watch)*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; and Susan Osnos is the communications director. Robert L. Bernstein is the chair of the executive committee and Adrian W. DeWind is vice chair. Its Middle East division was established in 1989 to monitor and promote the observance of internationally recognized human rights in the Middle East and North Africa. Andrew Whitley is the executive director; Eric Goldstein is the research director; Aziz Abu Hamad and Virginia N. Sherry are associate directors; Suzanne Howard is the associate. Gary Sick is the chair of the advisory committee and Lisa Anderson and Bruce Rabb are vice chairs.

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## **Introduction**

Six months after the liberation of Kuwait, the thirst to avenge the horrors of the Iraqi occupation continues to spawn a new round of human rights victims -- this time at Kuwaiti hands. Despite the prominent role played by calls to defend human rights in rallying support for the war against Iraq, the reinstated Kuwaiti government has trampled on those rights at nearly every turn, often with the use of violence. Murder, torture, arbitrary detention and deportation have been the tools of this campaign of vengeance.

The pretext for these abuses is a government-inspired quest to root out those who collaborated with the Iraqi occupiers and to restructure Kuwaiti society in a fashion that is deemed more reliable politically. Statements that continue to be issued by senior Kuwaiti government officials, including the Emir and the Crown Prince, have served as virtual invitations to abuse. The victims, almost uniformly long-term residents of Kuwait, are principally Palestinians, Iraqis and the stateless Arabs known as Bedoons. Other victims include Sudanese, Egyptians, Tunisians and some Kuwaiti citizens.

To criticize these abuses is not to condone the abominations of the Iraqi occupation. Middle East Watch has devoted extensive energy to documenting, publicizing and condemning those horrendous acts, just as it has worked to record and denounce Iraqi abuses in Iraq. However, the measure of Kuwaiti respect for human rights is not the barbarity of Saddam Hussein but the international standards to which Kuwait has formally subscribed, including the Fourth Geneva Convention and its First Additional Protocol, as well as the requirements of customary international law. By these standards, Kuwait's human rights conduct since liberation has been nothing short of deplorable, as Middle East Watch found during two fact-finding missions to Kuwait (in March and May/June) and extensive follow-up investigation by telephone and by allied human rights workers in Kuwait.

The nature of Kuwaiti abuse has changed over time. The violence of the early months of liberation is increasingly being supplanted by an inhumane and illegal deportation process which threatens to accelerate in light of a governmental decree that residency permits of all non-Kuwaiti citizens will expire at the end of October.

In the months immediately following liberation, summary executions, as well as deaths in detention caused by beatings and neglect, were the most pressing problem. Scores are known to have been killed at the hands of Kuwaiti forces, according to investigations conducted by Middle East Watch, including the discovery of mass graves containing 54 unidentified bodies of victims of post-liberation killings.

Although the Kuwaiti government has attempted to blame individuals beyond its control for these killings, most were committed by official security forces or by irregular armed groups working closely with official forces, including many returning exiles intent on revenge who were openly welcomed by an army eager to augment its reduced ranks. Frustrated by the lack of opportunity to fight the Iraqi occupiers, these armed forces redefined the "enemy" to include

the disfavored nationalities listed above. The most notorious source of abuse has been the State Security Secret Police (*Mabaheth Amn al-Dawla*), which reportedly actively recruited hundreds of youths, often of unscrupulous bent, who were granted wide discretion to arrest, beat and hold prisoners incommunicado for long periods.<sup>1</sup>

The highest levels of the Kuwaiti government are complicit in these killings in that they have yet to arrest or prosecute any of those responsible, in notable contrast to the vigor with which the government has pursued perceived collaborators with the Iraqi occupiers. Nor have exhumations or any other form of investigation been ordered into the mass graves containing unidentified victims of post-liberation violence. To the contrary, the periodic government calls to cleanse Kuwait of a presumed fifth column have, if anything, further inspired this violence.

While the incidence of killing has diminished since the initial months following liberation, arbitrary detention and torture remain at troublingly high levels. Torture takes place in a variety of government detention centers, abetted by the government's tolerance of long-term incommunicado detention and the absence of any prosecution of those responsible for violence against prisoners. Severe beatings with fists and clubs are the most common form of abuse, but other techniques include electric shock, burns with cigarettes and other hot items, rape, and the denial of food and water. Some of the torture was designed to elicit confessions, of the sort regularly introduced during the martial-law trials of suspected collaborators, but much of the torture was applied simply as an instrument of collective punishment against random members of the disfavored nationalities.

The government's hand in flouting international standards was most readily apparent in the charade that passed for trials before the martial-law tribunals charged with judging suspected collaborators. The proceedings, several of which were attended by Middle East Watch observers, were fundamentally marred by a series of due-process shortcomings, in violation of international fair-trial standards to which Kuwait has subscribed, including Article 75 of the First Additional Protocol to the Geneva Conventions. In addition to the routine introduction of confessions coerced through torture, defendants were systematically interrogated by the police, prosecutor and often the court without the benefit of having consulted with counsel; conduct was penalized which was not clearly proscribed by pre-existing criminal law; evidence of guilt other than coerced confessions was often slight or non-existent; some defendants were tried in absentia without any showing that they had fled after having been formally notified that charges were pending against them; no appeal was permitted; the informal clemency review process which was allowed, while resulting in all death sentences being commuted to life imprisonment, yielded reaffirmations of every conviction entered by the martial-law courts, showing a lack of meaningful scrutiny; and the trial court, on the rare occasion that it showed any willingness to consider the frequently raised defense of coercion by the Iraqi occupiers, paid little or no apparent heed to the differing duties of loyalty to the Kuwaiti government-in-exile that could fairly be expected from Kuwaiti and non-Kuwaiti citizens.

The result was that 118 of the 164 tried were sentenced to harsh prison terms, with no further judicial recourse. Hundreds more are awaiting trials, apparently scheduled to resume in September, before state-security courts with a track record that is little better than that of the

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<sup>1</sup> Testimony of two Kuwaiti human rights workers, May 23 and 24, 1991.



martial-law courts.<sup>2</sup>

Relatively few of those detained since liberation have even been brought to trial. At least 5,800 have been detained in the six months since Iraqi forces were driven from the country, of which at least 3,000 remain in detention today. Roughly one-third are in custody pending deportation; most of the remainder are being held without any formal charge having been filed against them, including at least 300 incarcerated in incommunicado detention. In light of the lack of due process, many of these detentions must be considered arbitrary.

Deportations of long-term residents begun shortly after liberation accelerated during the summer months and threaten to reach a crescendo when residency permits for all non-Kuwaiti citizens expire, by government decree, at the end of October. Although the Fourth Geneva Convention provides important legal protections for Iraqis, Palestinians, Bedoons and others in Kuwait, these protections have been systematically flouted in the process of summarily deporting these groups. Stateless Bedoons and Palestinians have been expelled without any provision being made for a country to accept them. Refugees who fear persecution in Iraq have been returned to Saddam's grasp. Expulsions have proceeded without any opportunity to challenge deportation before an independent tribunal. Those facing deportation have been held in grossly substandard detention facilities, without any opportunity to work or any provision being made for the needs of family dependents. And those expelled have been dumped in the middle of a mine-infested desert, without food, water or medicine necessary for their survival.

The bitter irony of this collective punishment is that many non-Kuwaiti citizens actively sided with the Kuwaiti government-in-exile in resisting the Iraqi occupation, at times even joining the armed forces of the resistance. The Palestinian community in Kuwait also boasts of its critical role, at the request of the government-in-exile, in keeping essential services operating so that life in Kuwait, and thus resistance, would be possible. Some 82 Bedoons are known to have been killed by the Iraqis on suspicion of resistance and thousands were detained by Iraqi forces. Similarly, 58 other non-Kuwaiti citizens are known to have been killed and hundreds detained by Iraqi occupying forces for alleged resistance activities.<sup>3</sup> Some accounts of this armed resistance by non-Kuwaitis has been published in the government media.<sup>4</sup> But this chapter in the history of the resistance movement is now being rewritten by the Kuwaiti government in an effort to rid Kuwait of entire communities of Arabs accused of having sympathized with Saddam Hussein.

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<sup>2</sup> See, e.g., U.S. Department of State, *Country Reports on Human Rights Practices for 1990*, p. 1511. Evidently to accommodate the expected influx of cases, Kuwait added a second state-security court on August 12, 1991. *Sawt al-Kuwait*, August 14, 1991. At the same time, the Kuwaiti government approved regulations allowing for the first time appeal of decisions by the state-security court. *Id.*

<sup>3</sup> In total, 320 people are known to have been killed by Iraqi forces during the occupation of Kuwait, from August 2, 1990 to February 25, 1991. Hundreds more have not been accounted for.

<sup>4</sup> See, e.g., Diana Abu Haider, "Arabs in the ranks of the resistance: They faced the invaders with their Kuwaiti brothers," *Sawt al-Kuwait*, August 8, 1991 (in Arabic).

The United States has played a disturbing role in the face of this systematic abuse. Despite its leadership of the alliance that returned the Emir to the throne, its ongoing role in defending Kuwait and rebuilding its infrastructure, and the tremendous esteem with which it is held in the eyes of many Kuwaitis, the U.S. Administration has shown a disturbing unwillingness to protest severe abuses in Kuwait. Evidently more concerned with reaping the political dividends of the Desert Storm military victory than with highlighting anything that might tarnish that endeavor, the Administration has acted far more as a defender of the Kuwaiti government -- rebutting human rights criticisms and actively seeking to deflect attention from Kuwaiti abuses -- than as a government intent on living up to the human rights principles which formed part of the rallying cry for war with Iraq.

### **The Kuwaiti Government's Responsibility**

The Kuwaiti government, both in its public statements and in meetings with Middle East Watch representatives, has denied responsibility for most of the abuses against non-Kuwaitis by attributing the violence to private individuals. This abdication of responsibility is untenable, even under the special circumstances following the liberation of Kuwait, for the following reasons:

First, most of the abuses documented in this report were committed by *government* forces, including the military and the state-security police. Often these forces wore official uniform or used official vehicles<sup>5</sup> and they acted in furtherance of the government's declared goal of apprehending and punishing collaborators with the Iraqi occupying authorities.

Second, the Kuwaiti government is responsible because it encouraged and condoned the acts of its security forces, as well as of private individuals, by not taking decisive action to stop repeated abuses, including by punishing perpetrators. In speeches, interviews and statements in the official media, the highest-ranking officials have warned repeatedly about the need to cleanse Kuwait of "fifth columnists" and to purge "evil elements."

- o Before Kuwait was liberated, Shaikh Sa'ad al-Abdalla al-Sabah, the Crown Prince and Prime Minister, told a reporter, "When we go home, we shall check on the names of these people -- Palestinians or not Palestinians -- the Kuwaitis there know these people very well." When he was asked what would happen to those captured, he replied: "I think it's very difficult for me to give you anything specific."<sup>6</sup>
- o After liberation, during a violent campaign against suspected collaborators, the April 8 speech by the Emir, Shaikh Jaber al-Ahmed al-Sabah, added fuel to the campaign of vengeance. In this first address to the nation after returning from exile, he said,

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<sup>5</sup> In several cases documented by Middle East Watch, uniformed or plainclothes individuals committing the abuses employed cars displaying markings used by the Allied forces in the Gulf War.

<sup>6</sup> Robert Fisk, "Kuwaiti prince promises reforms," *The Independent* (London), February 21, 1991.

There is another subject to which I want to alert you so that you are well aware. We know that the tyrant of Iraq is still in power and as such I alert you brother citizens to take precautions and be vigilant. Even though he was not able this time to achieve his goal, we cannot trust that he will not plan another attempt. He may seek again to sow the seeds of his evil in Kuwait. We cannot be sure that he is not relying on a fifth column of his cohorts among us to shake our security and stability. I do not believe that Kuwait has been cleansed of them yet.<sup>7</sup>

- o In outlining the priorities of his government to the first session of the National Council on July 9, 1991, Shaikh Sa'ad said, "Work has already started to purify the country of the evil elements, who constitute a danger to the security of the nation and the safety of its citizens."<sup>8</sup>
- o Similarly, Shaikh Ali Sabah al-Salem al-Sabah, Minister of Defense, said in an interview with a government daily that Iraq had planted a fifth column which is still in Kuwait.<sup>9</sup>
- o The government paper, *Sawt al-Kuwait*, regularly fanned the flames of vengeance against non-Kuwaitis. In a May 8, 1991 editorial, the paper denied "rumors" of violations of Palestinian human rights, and claimed that in any case Palestinians committed a "collective crime" during the occupation when they engaged in a "concerted attempt to cripple Kuwaiti civil disobedience against the Iraqis." It dismissed as individual cases, acts of resistance against Iraqi troops by Palestinians during the occupation. Another editorial in the August 6, 1991 issue of *Sawt al-Kuwait* stated, "How can we achieve security when Kuwait is full of hordes of fifth columnists who helped the Iraqi aggression?...Even those who did not directly help the occupation assisted in other ways: they obeyed its decisions and implemented its policies when Kuwaitis refused....They still live inside Kuwait."

Most of these statements were not balanced by calls for restraint or for punishment of those who took the law into their own hands. The sole exception has been Shaikh Sa'ad al-Abdalla al-Sabah, the Crown Prince and Prime Minister, who, after denying for months the problem of official abuse,<sup>10</sup> acknowledged its existence in a speech on May 26.<sup>11</sup> However,

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<sup>7</sup> From the address to the nation by Shaikh Jaber al-Ahmed al-Sabah, Emir of Kuwait, on April 8 (KUNA, April 10, 1991), translated by MEW.

<sup>8</sup> Full text published in *Sawt al-Kuwait*, July 10, 1991.

<sup>9</sup> *Sawt al-Kuwait*, July 5, 1991.

<sup>10</sup> In an interview with the Kuwaiti newspaper *al-Siyassah*, the Crown Prince said that only one or two cases of human rights violations took place in Kuwait, and that they happened "before the arrival of the official government apparatus." *Al-Siyassah*, May 15, 1991, as reported in Foreign Broadcast Information Service, *Near East and South Asia Daily Report* [hereinafter FBIS], May 16, 1991.

<sup>11</sup> He said, "There have been crimes committed whose perpetrators I do not know. I have heard, for example, that some have kidnapped residents of Kuwait, regardless of their nationality -- from the street or from their homes -- and taken them to police stations where they are tortured. This method is unacceptable and must stop. It is possible that some elements who were able to obtain military

other officials continue to deny the mere existence of abuse. In an interview with *USA Today* (July 3, 1991), Shaikh Sa'ud Nasser al-Sabah, Kuwait's Ambassador to the United States, said that reports of Kuwaiti attacks on foreigners were mere "rumors and speculation," and that he did not know of even one such case. Similarly, Dhari al-Othman, Kuwaiti Minister for Cabinet Affairs, told *al-Hayat* that reports of abuse were "frivolous claims and untrue allegations."<sup>12</sup>

Third, no Kuwaiti official is known to have been charged or brought to trial for human rights violations. Even though Hamed al-Othman, Kuwait's Acting Public Prosecutor, has said that five or six cases of security-force abuse were under investigation, there is no evidence of any follow-up. Kuwait's failure to prosecute security-force officials responsible for violent abuses is a violation of its duty as a state to prevent such abuses. Even insofar as private individuals are responsible for acts of violence, the government's systematic failure to apprehend and prosecute violent offenders -- indeed, its close cooperation with them as they abduct and detain suspected foreign nationals -- is a violation of its duty to protect Kuwaiti residents from acts of violence by any party.

Kuwaiti official spokesmen have pointed out that Kuwait is in a state of emergency, implying that it should be exempted from the normal obligation to protect the human rights of its residents. However, even in the case of a public emergency which threatens the life of the nation, no derogation is permitted from a government's obligations under international human rights law to protect civilians from extrajudicial killing, torture, and cruel, inhuman or degrading treatment or punishment.<sup>13</sup>

Nor may this duty be suspended even in time of war. Kuwait has acceded to the Geneva Conventions of 1949 and their additional Protocols, which govern state behavior during war or occupation. This body of law, too, prohibits acts of violence against noncombatants. Even those suspected of aiding the enemy or committing other serious infractions are entitled under these instruments to humane treatment and fair trials.<sup>14</sup>

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uniforms have committed these crimes, and consequently security men acquired this reputation." He further called on the security forces to search for these elements who "masquerade in the uniform of the police, the Army or the National Guard," arrest them and bring them to trial. Text of the Crown Prince's May 26, 1991 address to a meeting with Ministry of Interior officials, as provided by KUNA, the official press agency. Translation by MEW.

<sup>12</sup> Hamad al-Jasser, "The Kuwaiti Cabinet Approves the Dismissal of 14 Officers," *al-Hayat* (London), July 30, 1991.

<sup>13</sup> Art. 4 of the International Covenant of Civil and Political Rights. Although Kuwait has not ratified the covenant, the prohibitions against torture and arbitrary execution are considered binding on all nations a matter of customary international law. See, e.g., Restatement of the Foreign Relations Law of the United States § 711.

<sup>14</sup> Articles 31, 32 and 33 of the Fourth Geneva Convention and Art. 75 of Protocol I.

## Extrajudicial Killings

Middle East Watch has investigated scores of cases of Kuwaiti residents who have been killed by Kuwaiti security forces or groups working closely with them, or who have died as a result of torture and inadequate care in Kuwaiti official custody. Most of these killings occurred in March and April, but some took place thereafter. While the Kuwaiti government has failed to provide a full accounting of extrajudicial killings committed by its forces, including deaths in military custody, Middle East Watch has documented a number of such cases and received reports of numerous others. Some of those killed were summarily executed with a bullet to the head. Others died as a result of torture, denial of medical care or lack of water.

One Kuwaiti cemetery, al-Rigga, holds 54 "unidentified" bodies of people who have been killed or have died in unexplained circumstances since the week after liberation, according to cemetery records. Most of the killings were recorded as having occurred in March, but six were listed as having taken place in April and one in May. Other cemeteries and hospital morgues may contain other such bodies. Several factors point to government responsibility for these deaths. First, the large number of unidentified dead is especially unusual considering that the ubiquitous checkpoints in Kuwait since liberation make it unthinkable for most people to travel about without identification papers. Second, in several cases, documentation obtained by Middle East Watch shows that the bodies were received from police stations known for violent abuses -- in one case, contrary to legal requirements, without first passing through a hospital morgue to determine the cause of death.<sup>15</sup> Third, the blanket of silence with which the Kuwaiti government has shrouded these killings since Middle East Watch publicized them in early June<sup>16</sup> suggests an effort to shield, rather than expose, those responsible for the murders. By contrast, when a mass grave was later found in northern Kuwait containing 23 people believed to be Kuwaitis killed by Iraq, the Kuwaiti government launched an immediate investigation.<sup>17</sup>

Among the identified victims who appear to have been killed by Kuwaiti security forces are the following:

- o Khalil Bahoo, a Palestinian director of Umm al-Haiman Secondary School, was arrested in late March or early April. On April 10, his wife was informed by the Abu Helaifa Police Station that he was very sick and had been taken to al-Addan Hospital. At the hospital, when his relatives were permitted to see him, they found that he had been dead

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<sup>15</sup> A police officer at the Sabah al-Salem police station, from which the body was delivered directly to al-Rigga Cemetery, told Middle East Watch variously that the body was of a drug addict and a car-accident victim, without explaining why the body had not been delivered to a hospital morgue.

<sup>16</sup> See, e.g., Kenneth Roth, "Mass Graves in Kuwait," *The New York Times*, June 11, 1991.

<sup>17</sup> According to a pro-Kuwaiti-government newspaper, *Al-Fajr al-Jadid*, July 7, 1991, U.S. forces found the bodies of 22 men and one woman inside a large steam pipe while they were clearing the headquarters of the Kuwaiti Sixth Brigade in al-Rawdhateen, ten miles south of the Iraqi border. The paper cited the belief of Kuwaiti officials that the bodies were of Kuwaitis who had been killed by Iraqi forces. It said that the bodies had been removed and taken to the Ministry of Interior's Department of Criminal Evidence for identification.

for some 10 days, having been killed by a sharp weapon, and his nose and ears had been amputated. Middle East Watch was told that his death certificate, signed by a Kuwaiti doctor and nurse, said that he had died of a heart attack and kidney failure on April 5.<sup>18</sup>

- o Hassan Atiyya Muhammed Musa, 38, a Palestinian (Jordanian citizen) who had lived in Kuwait since 1965. He left his home on February 27 and disappeared until, according to his family, the International Committee of the Red Cross (ICRC) informed them on March 23 that he had been seen in what was later identified as the military prison. According to a death certificate given to the family by the ICRC, he died in detention on April 4 after being taken to al-Farwaniyya Hospital, and was buried in al-Rigga Cemetery on April 14. The death certificate listed the cause of death as severe diarrhea, dehydration and kidney failure -- ailments from which he had never suffered, according to family members.<sup>19</sup>
- o Selim Mukhtar, a 56-year-old Palestinian dentist, was shot and killed by two armed men on April 4. According to a woman companion who was later interviewed by a Kuwaiti human rights monitor, a civilian car with a flashing blue light chased and stopped them on the Fourth Ring Road. A group of armed men asked Dr. Mukhtar to get out of the car, beat him over the head, shot him, and then fled. Even though Kuwaiti security forces said that they had received instructions "from the highest levels" to investigate the killing,<sup>20</sup> no progress has been made.<sup>21</sup> The deceased, by the account of Kemal Tu'ma, a Lebanese journalist who knew him for a long time, was a peaceful and literary man, highly respected in the Palestinian community, who could not have been involved in any violence.<sup>22</sup>
- o A 27-year-old hospital-lab technician, whose family requested anonymity for fear of reprisal, was taken from his home in Khaitan with his brother on March 12 by men in military uniform. They were both beaten in Khaitan Police Station, kept for two days and interrogated about their alleged collaboration. One of them was released and the other taken to al-Farwaniyya hospital where he died two days later (March 16) from head injuries he sustained in the beatings.<sup>23</sup>

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<sup>18</sup> MEW interviews, May 27 and 28, 1991.

<sup>19</sup> MEW interviews, May 27 and 28, 1991.

<sup>20</sup> *al-Hayat*, April 8, 1991.

<sup>21</sup> A reporter visiting Mubarak al-Kabir Hospital noticed that the only witness to the killing, a Filipino woman who was also wounded in the incident, had not been accorded any protection. *The Guardian* (London), April 14, 1991.

<sup>22</sup> MEW interview, April 15, 1991.

<sup>23</sup> MEW interview, March 22, 1991. Family members told MEW that they were ordered by the military men based in Khaitan Police Station to have a quiet funeral and not to discuss the killing. Friends of the victim told MEW that they were afraid to visit the family for fear of reprisal.

- o A Kuwaiti community volunteer told Middle East Watch that he witnessed the killing of a Bedoon prisoner in al-Rumaihiyya police station on March 12. He said that a Kuwaiti in military uniform came to the police station asking, "Where are the Iraqis?" He did not find any, but saw a Bedoon who looked like he could have been Iraqi. He shot the prisoner in the head, saying "This will have to do."<sup>24</sup>
- o Dr. Nazmi Khorsheid, 47, a Palestinian physician who had lived in Kuwait and worked for the Ministry of Health for 15 years. He was arrested on March 10 by two armed men, one in uniform, during a meeting of physicians. He was reportedly taken to al-Ardhiyya Police Station and later to the Military Prison where on March 13, according to witness accounts given to Middle East Watch, he was beaten into unconsciousness by two soldiers, and then two other soldiers walked on his stomach and back and hit the back of his neck, apparently breaking his back. He reportedly died the following day, although there is some evidence that he may have continued to live in a comatose or near-comatose state.<sup>25</sup>
- o Shawqi Khalil Mahmoud, 58, a Palestinian employee at al-Razi Hospital, was reportedly arrested on March 9. Al-Farwaniyya Hospital contacted his family on April 26 to claim his body, which bore signs of torture.<sup>26</sup>
- o Jaber Mes'ed al-Dhefiri, a military-intelligence sergeant who manned a checkpoint in al-Shuwaikh, told Middle East Watch on March 25 that he himself had killed a Palestinian two weeks earlier because the Palestinian had hit a lieutenant during an argument.<sup>27</sup>
- o An auto-repair-shop operator from al-Nugra was reportedly arrested by a group of Kuwaiti civilians and resistance on March 5 and died as a result of torture the next morning at al-Salhiyya police station.<sup>28</sup>
- o Basim Muhammed Said Jabr Ismail, 24, a Palestinian from Zaita (Tulkarem, the West Bank) operated an auto-repair shop on Ibn Khaldoun Street in Kuwait. He was arrested around 4:00 p.m., March 5, together with his brother, Bassam, and five others, by Kuwaiti military men. They were taken to al-Salhiyya police station, where they were interrogated and beaten. According to Bassam, Basim died as a result of torture later that evening, at around 1:00 a.m. His body was dumped in District 10 in al-Nugra, a

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<sup>24</sup> MEW interview, March 17, 1991.

<sup>25</sup> MEW interviews, May 27, May 28 and May 30, 1991. Dr. Khorsheid's wife told a Dutch journalist on August 4 that she believed that her husband had been killed but that she had not seen the body. MEW interview, August 25, 1991.

<sup>26</sup> MEW interview, May 30, 1991.

<sup>27</sup> It is, of course, possible that the sergeant was simply boasting of something he did not do. Even then, the incident demonstrates the sense of impunity prevailing among Kuwaiti military officials regarding acts of violence against Palestinians.

<sup>28</sup> MEW interview, May 31, 1991.

Palestinian neighborhood, the following day, and he was buried in al-Rigga Cemetery on March 7.

- o Ismael Farhat, 56, a Lebanese, and his Kuwaiti-born son, Usama Farhat, 20, were killed at their home on March 2 by armed Kuwaiti men who said they were soldiers. Ismael's daughter, Naimat, who was born in Kuwait in 1959, was shot twice and left for dead in the same incident. Ismael Farhat had been an employee of the Kuwaiti Ministry of Interior for over 30 years; the son was a student and the daughter a bank employee. In the evening of March 1, Usama had been questioned about his papers at a checkpoint and taken to Salwa Police Station with a friend. They were questioned from 7 to 10 p.m., and then released. Later, around 4 a.m. on March 2, four men in civilian clothes came in a car to the family home in Salwa; three of them stayed in the car while the fourth went into the house. He identified himself as a member of the resistance and a soldier in the Kuwaiti Army. He also referred to the earlier detention of Usama, suggesting a working link with the Salwa Police Station. He told the family that he had authorization to search the house for evidence of collaboration. The father and the son were then tied up, and the armed man said that he was authorized to execute them because they had betrayed two Kuwaitis to the Iraqis during the occupation.<sup>29</sup> He then shot Ismael in the ear and Usama in the eye, killing both. He also shot Naimat in the head and the hand and left her for dead. She survived and received treatment at Ibn Sina Hospital but is now partially paralyzed. She was discharged from the hospital in mid-May and lived in hiding until July 6, when she left Kuwait.<sup>30</sup> The perpetrators have never been apprehended. One witness told Middle East Watch that a captain at Salwa Police Station had told him to keep quiet. Three neighbors also reported being threatened against testifying.
- o Iyad Rajeh Ahmed 'Ayed Aqrabawi, 14, a Palestinian, was arrested on March 2 in Kaifan with three other Palestinian youths. He was killed and his body taken to al-Rigga Cemetery where he was identified by one of the workers. Two of the youths arrested with him, Hassan Aymen Hassan al-Mu'ti and Youssef Khamis Mustafa, are still missing, and the fourth, Bassam Abdel Jebbar Hassan, was reported to be in prison.<sup>31</sup>
- o Two Iraqi POWs are known to have been summarily executed by Kuwaiti troops after they had surrendered. One was shot after he was handed to Kuwaiti soldiers by US troops stationed at Kuwait International Airport. "He never made it out of the runway,"

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<sup>29</sup> A Kuwaiti neighbor interviewed by Middle East Watch on July 17, 1991 contradicted the armed man's charges, reporting that the family had been against the Iraqi occupation and had sold its furniture rather than cooperate with the Iraqis. A son, Nadim, who was not home at the time of the attack, had participated in the resistance against the Iraqi occupation, according to an account in the Kuwaiti government newspaper *Sawt al-Kuwait*, August 8, 1991.

<sup>30</sup> This account is based on several interviews with family members, neighbors, a doctor who saw the victim at Ibn Sina Hospital, a lawyer representing the family and medical records. Naim Farhat, a son who is a U.S. citizen, told Middle East Watch that the Kuwaiti government had refused to issue him or his mother a visa to return to Kuwait to take care of Naimat and bury the dead.

<sup>31</sup> MEW interviews, March 25, May 27 and August 23, 1991.



said an American soldier. The other was found hiding by Kuwaiti troops and was executed later in an abandoned building.<sup>32</sup>

- o A Kuwaiti military officer working at the Juvenile Detention Facility provided Middle East Watch with a list of ten who died in custody in various detention centers as a result of torture between liberation and mid-May.<sup>33</sup> A former soldier of Kuwaiti nationality who was detained in the Military Prison for two weeks during March told Middle East Watch that he had witnessed four deaths as a result of torture.<sup>34</sup> A Palestinian who was also detained during March at the Military Prison told Middle East Watch that he had witnessed the death of 11 inmates there as a result of beatings, including 8 Palestinians.<sup>35</sup> Critical shortages of water, food and medical care at the Military Prison exacerbated the effects of these beatings. Prisoners were "dying rapidly," an informed international observer told Middle East Watch at the end of March.

Among the identified victims who were killed in acts of organized violence which cannot definitively be linked to Kuwaiti security forces are the following:

- o Dr. Salah Tahseen Ali, a 69 surgeon who is a U.S. citizen of Iraqi origin and who had lived in Kuwait for 10 years. His wife told Middle East Watch that he left for work at al-Ahmadi Hospital on June 22 but did not come back. He was missing for 25 days. On July 17, she was told by the Kuwaiti authorities that he had been killed in a car accident. Because of the disappearance, she suspected that her husband had been murdered. Denial of her request for an independent autopsy suggested official coverup.<sup>36</sup>
- o Najah Khalil Zakarneh, a 26-year-old Palestinian woman from the West Bank village of Qabatiyya, was found dead in her apartment in Kuwait City in mid-June. Her relatives believe the murder was perpetrated by a "Kuwaiti gang."<sup>37</sup>
- o Dhia' Wa'el Adib Munawwer, 20, a Palestinian with Syrian travel documents, was killed on May 29 in al-Salmiyya by two Kuwaiti men who reportedly had been abroad during the Iraqi occupation.<sup>38</sup>

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<sup>32</sup> MEW interviews and AP, March 22, 1991.

<sup>33</sup> MEW interview, May 19, 1991.

<sup>34</sup> MEW interview, March 27, 1991. He believed one of those who died was a Palestinian and one Bedoon. See more of his testimony below, under Military Prison.

<sup>35</sup> MEW interviews, May 27 and 30, 1991.

<sup>36</sup> MEW interview, August 22, 1991.

<sup>37</sup> *Mideast Mirror*, June 18, 1991.

<sup>38</sup> The case is reportedly being investigated by the Public Prosecutor's office, but no charges have been filed. MEW interview, June 2, 1991.

- o Muhammed Shawkat, a Palestinian, was tortured and killed, and his body thrown in a vacant lot, on May 23. According to his friends, he disappeared after he complained to the police about harassment by a Kuwaiti man.<sup>39</sup> A witness to the harassment reportedly was threatened and fled.
- o Yasser Taisir Taha, a Palestinian in his 20s, was found killed on March 14, near the Sports Palace Club in al-Salemiyya. His body bore signs of torture.<sup>40</sup>
- o Two bodies were found in al-Fentas, on March 5, one of which was preliminarily identified as that of a missing Palestinian, Omar Maiteloni.<sup>41</sup>
- o Mesaffer Abdel Kerim, an Iraqi actor who had lived in Kuwait for a long time, was killed in the beginning of March by armed Kuwaitis, apparently to punish him for having appeared on Iraqi television and supported the occupation. His wife, 16-year-old daughter and 10-year-old son were later detained, and were seen by Kuwaiti human rights workers at the Juvenile Detention Facility.<sup>42</sup>
- o A reporter in early March witnessed an elderly Sudanese accountant summarily executed by resistance fighters in front of his wife, for having Iraqi-issued license plates on his car. He and his wife were stopped at a checkpoint manned by six Kuwaiti "resistance" fighters, who killed him, raped his wife and shot at her several times.<sup>43</sup>
- o U.S. soldiers reportedly told a journalist that they had found the bodies of four Palestinians, all shot in the head, on March 5.<sup>44</sup>
- o Dr. Adel al-Asfour, director of al-Addan Hospital,<sup>45</sup> told Middle East Watch that five unidentified bodies of murder victims were brought to the hospital in the period between February 29 and March 21. He said some were found under a highway bridge

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<sup>39</sup> Sonni Efron, "After War Comes the Violence," *Los Angeles Times*, June 3, 1991.

<sup>40</sup> MEW interview, March 25, 1991.

<sup>41</sup> MEW interview March 21, 1991.

<sup>42</sup> MEW interviews, May 22 and 29, 1991.

<sup>43</sup> Tim Kelsey, "Saddam has left. But the horrors are not finished," *The Independent* (London), March 3, 1991. See also, *The Sudan Monitor* (London), March 1991. The *Monitor* also reported the testimony of Abdel Kader Bakhadem, an Algerian former resident of Kuwait who was deported from Kuwait in mid-March. He said that he had witnessed the death of two Sudanese and one Palestinian after they were pistol-whipped in a crowded cell on March 11, 1991.

<sup>44</sup> Mike McAlary in *New York Post*, March 6, 1991.

<sup>45</sup> This hospital was turned into a field hospital upon the by liberation of Kuwait and was run by the Saudi military.

and others near utility stations.<sup>46</sup>

In arriving at the conclusion that scores have been killed since liberation, Middle East Watch has taken care to list as killings only those cases for which there is some independent proof of murder beyond the disappearance of the victim. By including cases of simple disappearances, some observers have reached a higher total of post-liberation killings. Many of these disappeared may in fact be dead, but Kuwaiti authorities have stymied evaluation of these cases by keeping several hundred prisoners in incommunicado detention at the State Security Prison, the Geeone (National Guard) Prison<sup>47</sup> and the Military Intelligence detention facilities. Understandably in the current climate, families of those in incommunicado detention fear that their loved ones have been killed. A similar problem arises when the Kuwaiti government summarily deports non-Kuwaitis without notifying their families.<sup>48</sup> Until the government makes a serious effort to investigate all suspected killings, many Palestinians, Iraqis and Bedoons will continue to fear that their disappeared relatives have been murdered, leading observers to suspect that killings have been in the hundreds.<sup>49</sup>

## Disappearances

The Kuwaiti government has paid special attention to the issue of those who disappeared during the Iraqi occupation. It has set up the National Committee for Prisoners and the Missing, headed by the Minister of Justice, Ghazi Obaid al-Semmar, and including a member from the non-governmental Committee to Defend War Victims, a humanitarian and human-rights organization. The government has raised the issue of the disappeared at the United Nations and set up a bureaucracy to register and try to locate those who are missing.<sup>50</sup>

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<sup>46</sup> MEW interview, March 25, 1991.

<sup>47</sup> Also referred to in the Western press as G-1.

<sup>48</sup> See discussion below of disappearances and expulsions.

<sup>49</sup> An example of these estimates is the claim of a Palestine Liberation Organization spokesman in Tunis that over 300 Palestinians have been killed in Kuwait. Similarly, the pro-PLO Algiers-based Voice of Palestine cited a group called the Palestinian Human Rights Committee, which had reported that "well over 1,000, of various Arab nationalities," had been killed in Kuwait since liberation. FBIS, June 3, 1991. A more cautious figure was cited by Muhammed Marzuq Abdel Qader, the public-relations officer of the PLO Embassy in Kuwait, who was deported at the end of May to Cairo. He told the Jordanian newspaper *al-Ra'y*, June 9, 1991 edition, that "at least 37 Palestinians and Jordanians were executed and thrown in mass graves or left out in the open." He also estimated that 6,000 Palestinians and Jordanians were still detained in Kuwait. FBIS, June 11, 1991.

<sup>50</sup> *Sawt al-Kuwait*, July 21, 1991. In this front-page article, one in a long series, the government paper reported that Kuwait has sent a new letter to the Security Council detailing the names, prisoner numbers and places of detention in Iraq of Kuwaitis and others believed taken by Iraqi forces but whose detention is denied by the Iraqi government.

However, the Kuwaiti government has set up no such mechanism for those who have disappeared since liberation. While it is believed that officials at the Kuwaiti Ministry of Justice have partial lists of the post-liberation disappeared,<sup>51</sup> no known effort has been made to locate them. Furthermore, the procedure for registering those disappeared has been so poorly publicized that most families contacted by Middle East Watch did not know of it. In light of the climate of unchecked violence, families also expressed understandable fear of reprisals if they registered with the authorities. Instead, they preferred to notify the International Committee of the Red Cross, other humanitarian organizations, foreign embassies and the press. A Palestinian reported to Middle East Watch that he had been subjected to a threatening interrogation by security forces who accused him of compiling a list of detained and disappeared Palestinians.

The Kuwaiti practice of expelling foreign nationals and Bedoons without notifying families makes it more difficult to locate detainees or discover the fate of the missing. More seriously, the government has shown no interest so far in investigating the large number of unidentified bodies of people killed since liberation and buried in mass graves. As a result, some families may never locate their disappeared relatives.

It has not been possible to determine the total number of those unaccounted for since liberation, but Middle East Watch believes it to be in the hundreds, including some who may have been deported without notification to their families. Middle East Watch was given one list of over 100 Palestinians who have been missing since they were arrested. Other sources have given Middle East Watch scores of additional names.

Among the cases documented by Middle East Watch of those who disappeared at the hands of Kuwait security forces are the following:

- o A typical example of a disappearance documented by Middle East Watch is the case of Mohammed Semir Hafez Abdel Haleem, a 55-year-old Palestinian with a Jordanian passport, who was born in 1936 in Anabta, Palestine, and had lived in Kuwait for more than 30 years, most of them in al-Nugra, a predominantly Palestinian neighborhood. For the past 25 years he had worked as a power-plant maintenance foreman at the East Doha Electric Power Station. On March 4, he was taken from his place of work by a group of men in uniform. Even though his abductors did not identify themselves or provide an arrest warrant, his co-workers believed, based on statements made by the abductors, that the men were from the Shaheed Brigade (Martyr's Brigade) of the Kuwaiti Army, which is based in nearby al-Jahra. The victim's car was also confiscated. The International Committee of the Red Cross has not been able to locate him, nor has his family found him despite regular searches of police stations and other likely places of detention. The disappeared, a father of four sons and two daughters,<sup>52</sup> suffers from high blood pressure and diabetes, and needs a daily intake of insulin.

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<sup>51</sup> MEW interview with a Ministry of Justice official on June 6, 1991.

<sup>52</sup> His wife, 53, and four sons (11-28) are in the United States. One daughter, Malak, 25, is in Kuwait, and the other, Oraib, 19, is in Baghdad. (MEW interviews, March 20 and June 24).

- o Mu'tazz Muhammed Saleh al-Taye', 22, and his brother Muntasser, 20, were taken to the State Security Prison on April 5 and have not been heard from since. They are sons of Hamda As'ad Youssef, 55, a Palestinian high school principal who was sentenced to death (later commuted to life imprisonment) by a martial-law court on June 17. She was convicted of collaborating with the Iraqi occupiers because she had operated her school during the occupation -- in defiance of the boycott called by the Kuwaiti government-in-exile -- and allegedly applied for work at the occupation newspaper, *al-Nida'*.<sup>53</sup>
- o An American nurse who worked in Kuwait until early June, told Middle East Watch of two Palestinian brothers she knew who had been taken from their home on March 19 by "four civilians" and not been seen since. According to the nurse, the civilians were believed to be Kuwaiti secret police. She also reported that four youths aged 15 to 16 had disappeared from their homes in al-Salemiyya district for no apparent reason.
- o Hassan Aymen Hassan al-Mu'ti and Youssef Khamis Mustafa, two Palestinian youths, were arrested on March 2 and are still missing. They were arrested while driving in Kaifan with two other Palestinian youths, Bassam Abdel Jebbar Hassan and Iyad Rajeh Ahmed 'Ayed Aqrabawi, 14. Iyad was killed and his body taken to al-Rigga Cemetery where he was identified by one of the workers there.<sup>54</sup> Bassam is reported to be in prison. But the two others, Hassan and Youssef, are still missing.<sup>55</sup>
- o A Palestinian family, who requested that their name be withheld, told Middle East Watch that two of their sons were taken on March 1. They discovered that one of them was being held at the Juvenile Detention Facility, and from a newspaper learned that he was going to be tried on May 29 (later postponed). However, the family does not know the whereabouts of the other son.<sup>56</sup>
- o Aifan Ali Dhaher al-Enezy, 45, a Bedoon civilian employee of the Ministry of Defense, and his son Abdalla, 23, unemployed, were taken from their home around midnight on February 27 by a group of armed men and have not been heard from since. According to family members, they were taken away by a group of ten men in civilian clothes accompanied by one in military uniform who spoke with a Saudi accent and drove a car displaying the sign of the Alliance. Three days later the family's car was burned by unknown arsonists while parked next to their home in al-Jahra.<sup>57</sup>

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<sup>53</sup> *Sawt al-Kuwait*, June 18, 1991.

<sup>54</sup> See above under Extrajudicial Killings

<sup>55</sup> MEW interview, March 25, 1991.

<sup>56</sup> MEW interviews, May 30 and June 1, 1991.

<sup>57</sup> MEW interviews, March 29, 1991 and June 13, 1991.

Others have disappeared at the hands of unidentified forces. They include the following cases documented by Middle East Watch:

- o Jameel Ra'oof Hashem al-Kadhemi, 59, an Iraqi bank manager and long-term resident of Kuwait, was abducted on March 10 by three armed men who said they were taking him to al-Jaberiyya police station. The police station denied that he was ever brought there. More than four months later, his family still does not know his whereabouts and fears for his life. Their efforts to find him at the usual places of detention have been frustrated by a lack of cooperation on the part of Kuwaiti security officials.<sup>58</sup>
- o Hussein Abed Ali al-Turky, a 22-year-old Iraqi resident of Kuwait, was abducted from his home on March 6 and is still missing. According to his widowed mother, he was abducted by a group of 14 armed men -- four of them were masked -- who wanted him for questioning. She tried unsuccessfully to find information about him in police stations, hospitals and cemeteries.<sup>59</sup>
- o Muhammed Abdel Mihsen Tainab, a 66-year-old Bedoon, whose son has been missing since November 12 when he was abducted by the Iraqi secret police, told Middle East Watch that his 34-year-old daughter disappeared three days after liberation. He believes, based on eyewitness accounts, that his daughter was abducted by Kuwaiti militia men or security forces.<sup>60</sup>

## **Torture and Ill-treatment**

Torture and ill-treatment have been systematic in Kuwaiti places of detention since liberation. In the period immediately following liberation, both the military and the "resistance" started a simultaneous campaign of arresting people suspected of having cooperated with the Iraqi occupiers or of harboring sympathy for Iraq. The resistance is a heterogeneous grouping which includes some of those who fought the Iraqi occupation and some elements of the regular Kuwaiti army and police who have joined the resistance since liberation. Young Kuwaitis returning from exile are still joining the resistance and the army and are widely considered to be especially prone to human rights abuse. Even though there were some differences between the military and the resistance, the two groups seemed to work in a cooperative manner, and some of their rank and file were working in both camps.

In the large number of detention centers said by Kuwaiti officials to be outside the control of the military and to be run solely by members of the resistance, summary justice was the order of the day during the first month after liberation. Execution, torture, and beatings were meted out against those suspected of having betrayed Kuwait. Those still alive were then

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<sup>58</sup> MEW interviews, March 21 and July 18, 1991.

<sup>59</sup> Written testimony on May 31, 1991, and MEW interview, July 11, 1991.

<sup>60</sup> MEW interview, April 21, 1991.

either released or handed over to the military.

In prisons under complete military control, most detainees were held in extremely crowded cells and suffered severe shortages of water, medical care and food, leading to numerous deaths. A relief official who visited military facilities in late March and early April said detainees were "dying rapidly."<sup>61</sup>

While the Kuwaiti government declared that its policy was to protect the rights of detainees, it has not acted firmly to enforce this policy. For example, the government at the outset agreed in principle to allow the International Committee of the Red Cross to visit detention centers, which would have encouraged an improvement in prisoner treatment. But it took weeks before the ICRC was able to gain access to the first detention center, on March 23, because the government failed to assign a liaison officer with sufficient rank to facilitate the visits. To this day, the government has not secured full ICRC access to such key places of detention as the State Security Prison, the Geeone (National Guard) Detention Facility and the Deportation Prison.

In another example of failure to implement stated policy, the Kuwaiti government told Middle East Watch in late March that assistant prosecutors -- representing the Ministry of Justice -- would be assigned to police stations. However, this process took months to complete, and has yielded improvement in only some places, according to Kuwaiti human rights observers. Police officers in charge do not always defer to civilian prosecutors, whose authority since liberation has been restricted in practice.

Although there have been occasional reports by the government of investigations into abuse, no one has been brought to justice, despite the continuing prevalence of torture. Nearly all detainees are beaten or tortured, as shown by the following examples documented by Middle East Watch:

- o Kuwaiti human rights monitors told Middle East Watch that they visited al-Jahra South Police Station on May 15 to investigate allegation of prisoner abuse reported to them by three former detainees.<sup>62</sup> In one room, they found five Kuwaiti soldiers and a lieutenant beating three prisoners, and they also could hear screams from other rooms.
- o Three Palestinians and an Iraqi testified to Middle East Watch that they were arrested in mid-May, brought to the Sabah al-Salem Police Station, and tortured. They were put through a series of torture routines that seemed so well practiced that officers had names for the different torture chambers. After cursory questioning -- "How many Kuwaiti girls did you rape? How many Kuwaiti officers did you turn in to the Iraqis? How many cars did you steal? What were you doing during the occupation?" -- the youths were led individually through what the police called the Party Room, the Barbecue Room and the

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<sup>61</sup> MEW interviews, March 28 and April 12, 1991.

<sup>62</sup> Two of the three former detainees were Bedoons and the third Iraqi. Human rights monitors are not allowed access to prisons in Kuwait. However, either through personal connections, or while performing other tasks, they are sometimes able to observe the treatment of prisoners.

Drinking Juice Room. In each, at least a dozen uniformed troops applied various forms of torture: beating with sticks and poles, electric shocks and burns with cigarettes and heated rods, forced drinking of what smelled like sewage water. The scars were still visible when the four were interviewed by Middle East Watch ten days after their release.

- o A volunteer American nurse working in Kuwait reported to Middle East Watch the case of a 28-year-old Palestinian who was detained for hours at the Sabah al-Salem Police Station on April 24, because his car had Iraqi-issued license plates. While there, he was burned with cigarettes, kicked and beaten on the head, face, arms, legs and back. She also reported the case of another Palestinian, age 31, who was beaten on the face and body while being interrogated at Geeone on May 8.
- o Omar al-Owairdhi, 19, a Palestinian, was arrested with two of his friends while driving on April 15, and taken to a school used for detention. They were beaten and he was shot several times in the stomach and chest, requiring more than two months' stay in the hospital. He was accused of driving in a restricted area and refusing to heed orders to stop.<sup>63</sup>
- o Mahmoud Diyab Abdalla, a Palestinian auto-repair-shop owner, 35, was arrested on March 17 with his cousin, Omar Abdalla, and were both accused of illegal residence in Kuwait. They were taken to a detention place which Mahmoud said looked like a school in an area west of town. The facility held 30 other detainees, mostly Palestinians, but there were at least three Iraqis and one Egyptian. Mahmoud testified that both he and his cousin were severely beaten while handcuffed, but that his cousin was also viciously hit over the head with a wooden stick studded with nails. After they had been there for five days, two U.S. soldiers happened to come across them, provided them with first aid, and took them to al-Farwaniyya Hospital (Ward 18). Mahmoud was treated and released while his cousin was admitted for extensive surgery.<sup>64</sup>
- o Bessam Mahmoud Selaiman, 19, a Palestinian high school student with Lebanese refugee documents, was arrested on March 15 while waiting in line at a gas station in al-Edailiyya. He was taken by five military men to a tent nearby and beaten for hours on his head, back and legs with a wooden stick covered with hard plastic. When he did not provide answers, he was also made to swallow hot sauce. In addition, he was burned with cigarettes on the back and the left hand; the burns were still visible when he was interviewed by Middle East Watch on March 21. He was questioned about "Iraqi resistance" in Kuwait and about his brothers, who were suspected, he was told, of "belonging to the PLO." When he did not provide the required answers, he was taken

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<sup>63</sup> Written testimony dated June 28, 1991.

<sup>64</sup> MEW interview, March 27, 1991. The witness also said that the money he was carrying, 320 Kuwaiti dinars plus 60 Iraqi dinars, and his address book were confiscated. Ironically, his auto-body shop, which he showed to a Middle East Watch representative, was looted and burned during the Iraqi occupation, probably because, according to his testimony, he refused to repair an Iraqi officer's car free of charge.



to an army facility in the Kadhema Club.<sup>65</sup> While there he saw around 30 other detainees. He was questioned further and beaten by a group of soldiers, one of whom threatened him with a knife. A rope was then tied around his neck and his hands were tied behind his back, and he was hit with rifle butts. The soldiers said that they were going to execute him and started preparations, but instead they released him. He was taken outside and ordered to run. Soldiers then shot at him without hitting him; he did not believe they were aiming to hit him. The marks of the rope on his neck were still visible when he was interviewed by Middle East Watch. Because his Civil Identity Card was taken from him during detention -- a common tactic -- he did not dare leave his house for fear of being arrested again.

- o Na'el Mustafa Hassan Shershir, 18, a Kuwaiti-born Palestinian high-school student, was detained at Khaitan police station between March 2 and March 17. Based on a confession extracted through the use of torture from a friend, Hamoudi Atwi Abdel Hadi, he was accused of raising the Palestinian flag and trampling the Kuwaiti flag during the occupation. He was severely beaten for the first five days of detention with three-inch-thick wooden sticks on the back, chest, legs and head, until his body was swollen with bruises. When he was interviewed by Middle East Watch on March 22, he had more than 15 large welts on the back (½" X 3"-6" each), at least 3 similar welts on each leg, and about ten smaller ones on his chest. Some were infected because he had not received any medical treatment at the police station. He was afraid to go to nearby Mubarak Hospital, which was surrounded by checkpoints, for fear of being arrested again.
- o Jemal Na'im Abdel Rahim, 28, a Jordanian, was arrested at his house in Hawalli on March 17 by a group of soldiers that included Kuwaitis, Saudis and an Egyptian. He was beaten with sticks and plastic pipes, and live electric wires were used on him. He was released a few days later.<sup>66</sup>
- o Another Palestinian, Beshir Ibrahim al-Khatib, told Middle East Watch that he was detained between March 10 and March 16 in al-Jaberiyya police station, beaten with metal pipes and burned with lit cigarettes. He also reported being burned by candle wax dripped on his body and by heated metal bars.<sup>67</sup>
- o Jemil Kamel Jemil, an engineer at al-Farwaniyya Hospital, was arrested at the hospital on March 10 and detained for four days on suspicion of collaboration through his work at the hospital. He was released four days later. He was beaten while hand-cuffed and deprived of food during the entire detention period.<sup>68</sup>

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<sup>65</sup> This sports club was also used by the Iraqis as a place of detention during the occupation.

<sup>66</sup> MEW interview, March 23, 1991.

<sup>67</sup> MEW interview, March 23, 1991.

<sup>68</sup> MEW interview, March 24, 1991.

- o Yasser Ashour Yasseen, a Palestinian, was detained at al-Nugra police station for four days, from March 10 to March 14, where he was beaten regularly with metal and plastic pipes and rifle butts to extract names of Palestinians who had collaborated with the Iraqi occupiers.<sup>69</sup>
- o Zahi Mahmoud al-Ansawi, another Palestinian, 20, was tortured in the same manner during his five days of interrogation, from March 5 to March 10, also for the purpose of obtaining names of Palestinian collaborators.<sup>70</sup>
- o Iyad Selim Sa'id, 18, was detained briefly at al-Jaberiyya police station in mid-March on suspicion of having fired at a checkpoint at the entrance to Mubarak Hospital. He was beaten with sticks and rifle butts on the back, face and left ear, causing him to lose hearing in that ear.<sup>71</sup>
- o Olayyan Saleh Issa, Palestinian, 42, was arrested at a checkpoint, accused of burglary during the occupation, and taken to Sabah al-Salem Police Station on March 8. One cell held ten others, mostly Iraqis and Egyptians. During five of the six days he was in prison, he was regularly beaten with sticks and plastic-covered pipes, and threatened with execution. Even though he was released on March 14, marks of severe beating on his back and shoulders were still visible when Middle East Watch interviewed him on March 21.
- o Ahmed Mustafa, an engineer with the Ministry of Electricity and Water, was arrested on March 2 by Kuwaiti Army troops and accused of collaboration with the Iraqi occupiers because he possessed applications for a permit to move furniture which had been issued by the Iraqi government.<sup>72</sup> He was detained for one day and released after being severely beaten.
- o Employees at al-Jahra Polyclinic told Middle East Watch that men in uniform came to the clinic looking for a particular person on March 2. When they could not find him, they beat two Palestinian doctors in the clinic's pharmacy.

The martial-law trials of alleged collaborators exposed the systematic use of torture to extract confessions. Confessions were frequently the only evidence against defendants. Kuwaiti prosecutors seemed to believe that a confession, regardless of how it was obtained, is "the master

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<sup>69</sup> MEW interview, March 27, 1991. He was released on condition that he bring back names of collaborators or be detained again. He was re-arrested later in March.

<sup>70</sup> When he was interviewed by MEW on March 20, he still had laceration and bruises left from the beating he had received, on the head, arms and other parts of the body. He also had difficulty walking.

<sup>71</sup> MEW interview, March 21, 1991.

<sup>72</sup> The Iraqi occupying authorities required residents of Kuwait to secure permits before they were allowed to move furniture outside Kuwait.

of all evidence."<sup>73</sup> One military officer defended the treatment of prisoners by saying that "they all confessed their crimes." Another was more blunt: "We have to use force to make them confess. They would not confess without the use of force."<sup>74</sup> When asked about evidence against alleged collaborators, Abdel Aziz al-Dekhil, Deputy Minister of Justice, said, "Of course it depends on confessions. That is the main method."<sup>75</sup>

One defendant before the Fourth Martial-Law Court, on June 13, was Omar Essayed Muhammed Omar, a 40-year-old Egyptian. An official pathologist testified that the accused had sustained a number of permanent and temporary physical handicaps that resulted from severe beatings and torture inflicted on him during interrogation. A trial observer told Middle East Watch that the defendant was clearly acting in an abnormal manner during the proceedings. For example, when the prosecution called for the death penalty, the defendant started smiling and talking to himself incoherently. He was looking at the judge and the audience in a way that indicated he was not aware of what was taking place.

Usama Suhail Hussein was sentenced to death (later commuted to life imprisonment) on June 15, in the case of the occupation newspaper, *al-Nida'*, where he allegedly worked in its production. According to family members, he was tortured with live electric wires on sensitive parts of his body. He was made to sit on a lit heater, which scalded parts of his body so that during his trial he could not sit on a chair. His family also reported that he had cigarette burns on his body and that medical care had not been adequate.<sup>76</sup>

Other defendants tried before martial-law courts had broken shoulders, wrists burned by handcuffs through which electric current had been passed, broken fingers, welts from severe beatings, cigarette burns and variety of other marks left by torture inflicted to extract confessions.

## Rape

In early March, *The Independent* reporter Tim Kelsey described how Kuwaiti resistance fighters killed a Sudanese accountant, and raped his wife, for driving in a car with Iraqi-issued license plates.<sup>77</sup>

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<sup>73</sup> From the prosecutor's presentation in the case of Omar Essayed Muhammed Omar, on June 13.

<sup>74</sup> See below under Prison Conditions: Teachers' Association Hall.

<sup>75</sup> Shyam Bhatia, "Kuwaitis pave the way for public hangings," *The Observer* (London), April 22, 1991.

<sup>76</sup> MEW interview, July 4, 1991.

<sup>77</sup> *The Independent* (London), March 3, 1991, and *The Sudan Monitor*, March 1991.

A Kuwaiti-born Lebanese woman, 31, told Middle East Watch that she was raped in early March after being made to witness family members being killed by a man in resistance uniform who said that he was a soldier in the Kuwaiti Army. The soldier came with other armed men and accused the family of collaboration. He was familiar with an interrogation conducted hours before at the local police station. Officers at that police station declined to investigate the matter and told neighbors not to get involved.<sup>78</sup>

A 35-year-old Bedoon who was briefly detained in late March with her children<sup>79</sup> told Middle East Watch that an Iraqi woman was raped in a cell adjacent to hers, at the Department of Investigations and Coordination of the Ministry of Interior, in downtown Kuwait City.<sup>80</sup>

Also in late March, a British reporter told Middle East Watch that she had met a Filipino woman at al-Farwaniyya Hospital who had been admitted after being raped, and that four Iraqi women who had been raped were receiving treatment at Mubarak Hospital. Security forces and armed resistance men were implicated in these cases, she said.<sup>81</sup>

In mid-April, the London *Observer* reported what it termed a rape crisis in Kuwait -- "worse than anything experienced during the Iraqi occupation." According to its reporter in Kuwait City, women from Sri Lanka and the Philippines were being terrorized by armed Kuwaitis who demanded sex upon threat of death if they did not comply. The report estimated that "at least 50 Filipino women have been raped since the liberation," and attributed to official U.S. observers an estimate of "one rape or attempted rape every other day."<sup>82</sup>

Jack Kelly, a *USA Today* reporter who spent several months in Kuwait, reported in late April that "At least 50 Filipino, Sri Lankan and Indian women ... have reported being raped by uniformed Kuwaiti soldiers since Kuwait City was liberated." He also reported the belief of doctors that a similar number of rape victims had not reported the crime to the police. Kelly interviewed 12 women who said they had been raped by Kuwaiti soldiers and 15 who said they had been assaulted. "Nearly all showed scars, bruises, and cuts on their head, face, arms, chest, legs and stomach."<sup>83</sup>

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<sup>78</sup> MEW interviews, the report of intimidating witnesses in this case has been corroborated by three neighbors and a friend of the family.

<sup>79</sup> She was released with her young children after 24 hours, but her oldest son, 16, was kept in jail for claiming at a checkpoint that he was Kuwaiti and not a Bedoon. He was later transferred to the Military Prison. The boy's father, though a soldier in the Kuwaiti Army, told MEW that he was afraid to look for his son for fear of being arrested himself.

<sup>80</sup> MEW interview March 28, 1991.

<sup>81</sup> MEW interview with Kathy Evans, a British free-lance reporter in Kuwait (March 26, 1991).

<sup>82</sup> Shiyam Bhatia, "Rapists run amok in Kuwait," *Observer* (London), April 4, 1991.

<sup>83</sup> Jack Kelly, "Kuwaitis accused of rapes," *USA Today*, April 23, 1991.

Kelly reported later, on July 3, that the problem persisted. He said that non-Kuwaiti residents had been approaching him and other foreign reporters in large numbers to help them escape violence in Kuwait. One of them was a Filipino woman who said that she was raped by a Kuwaiti businessman, one of at least 100 Filipino women raped in Kuwait since liberation, according to the report.<sup>84</sup>

A Kuwaiti social worker confirmed to Middle East Watch these reports, saying that the attitude of Kuwaiti men in uniform is either that Asians supported the Iraqis and thus deserve this revenge, or that Kuwaiti men have been through difficult times and thus should be excused these excesses.<sup>85</sup> Two health workers at the Maternity Hospital, to which rape victims are often taken for treatment, also told Middle East Watch that the incidence of rape is much higher than it had been before the Iraqi invasion and that a majority of the cases involved armed Kuwaitis in military or resistance uniform, who first questioned women and then abducted them under the pretext of needing to check their papers.

Middle East Watch has no evidence to indicate that these acts of rape are committed as part of a deliberate government policy. However, the Kuwaiti government is nonetheless responsible for these crimes insofar as it is not fulfilling its duty to protect residents of Kuwait by vigorously investigating and prosecuting those who commit the crime of rape. The duty to act is particularly high when, as has often been the case since liberation, rape is committed by those in uniform. An American adviser to the Kuwaiti government was quoted as saying that the reason for the prevalence of rape was a combination of a shortage of police officers plus the fact that "the police don't care because they are only Filipinos or Sri Lankans."<sup>86</sup> This official indifference to the plight of foreign-national victims of crime transforms what would ordinarily be a matter of common crime into a governmental act of omission in violation of the victims' human rights.<sup>87</sup>

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<sup>84</sup> Jack Kelly, "For non-Kuwaitis, war is far from over," *USA Today*, July 3, 1991. In an interview in the same issue, the Kuwaiti Ambassador to the US, Shaikh Saud Nasser al-Sabah, described as "speculation and rumors" reports of "any case that was committed by a Kuwaiti citizen against any others in Kuwait."

<sup>85</sup> MEW interviews with a Kuwaiti social worker, who requested anonymity, on May 15, June 2 and July 17, 1991. She told MEW that she had accompanied Mr. Kelly of *USA Today* and other reporters who investigated post-liberation rape.

<sup>86</sup> *Observer* (London), April 14, 1991. In one case mentioned by the article, a police station refused to register the complaint of a woman who had been raped by two uniformed men who came into her home to "examine her papers."

<sup>87</sup> A report in the August issue of *an-Nasr*, published in Beirut by a group calling itself the Kuwaiti Islamic Information Center claimed that 157 Palestinian women were raped and 14 killed by Kuwaiti and Saudi troops in Kuwait in the first month and a half after liberation. The report is based on a purported letter dated April 15, from Shaikh Ahmed al-Humoud al-Jaber al-Sabah, Minister of Interior, to the Prime Minister, Shaikh Sa'ad al-Abdalla. Shaikh Ahmed was not appointed Minister of Interior until April 20.

## **Prolonged Incommunicado Detention**

The Kuwaiti government's use of incommunicado detention has facilitated acts of torture and mistreatment. From February 26 until March 23, almost all detainees were held incommunicado. On March 23, the International Committee of the Red Cross gained access for the first time to a detention facility, the Military Prison. Family visits followed, but most detainees did not see lawyers until after the martial-law trials started on May 19, when lawyers were allowed to see clients who had been formally charged. Some facilities, and parts of others, are still off-limits to the ICRC. In April, the ICRC was given only partial access to Geeone, the National Guard Headquarters, and on June 9 partial access to the Deportations Prison in al-Shuwaikh. The State Security Prison remains off limits. Access by others is more restricted, as in the case of the Military Intelligence wing of the Juvenile Detention Facility, where family and lawyers visits are not allowed. Family access is denied altogether to inmates at the State Security Prison and Geeone. Detainees believed to be held in private homes and schools or by Military Intelligence at improvised holding rooms are not allowed visits by families, lawyers or representatives of humanitarian organizations.<sup>88</sup>

An example of an incommunicado detainee is M. M., 47, a Palestinian engineer and a father of four, who was first kidnapped on April 9 by an armed gang, according to the police. The gang severely beat him and then dumped him near al-Qadesiyya Police Station. The police informed his wife on April 15 that he would be released immediately, but she was not allowed to see him. The authorities told her at various times since then that he was at al-Farwaniyya Hospital, the State Security Prison, and the Interior Ministry, but she was never allowed to see him.<sup>89</sup>

Two Kuwaiti-born Palestinians, Khaled Awdi Moussa Ibrahim Abu-Seiba, a 32-year-old contractor, and his brother, Kemal, a 26-year-old actor, were arrested on March 17. They were held incommunicado for over two months before they were allowed to see their family and a lawyer. Both were accused of collaboration, murder, and gun possession. Khaled had one finger and one toe broken as a result of torture. They were brought to trial before a martial-law court but their case had been postponed twice when martial law was lifted. Khaled was transferred to a psychiatric hospital for treatment of symptoms brought about by torture, according to his family. Kemal is still at the Juvenile Detention Facility where he has been since April. The family has been told that the two will be tried before the state-security court.<sup>90</sup>

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<sup>88</sup> One family of a disappeared person told MEW that they believed he was held in a private home. Kuwaiti human rights workers also told MEW that a number of detainees were kept in private homes. One such case is the Kuwaiti Selaiman al-Adsani, who was taken in June to the private home of Khaled Saud al-Sabah and tortured before being released.

<sup>89</sup> MEW interview, May 30, 1991.

<sup>90</sup> MEW interviews, May 29, June 6 and July 17, 1991. A cousin of the two, Mufeed Abu Seiba, 24, was arrested on May 1, tortured, and deported on June 21. He was accused of having illegally entered Kuwait because he had left the country and come back during the Iraqi occupation. His family

## Arbitrary Arrest and Detention

Since liberation, thousands of people have been detained without due process of law, beaten, and tortured. Detainees are mostly Palestinians, Iraqis and Bedoons, and include Sudanese, Egyptians, Tunisians and Kuwaiti citizens.<sup>91</sup> Because the government has not given a full accounting, a definitive number of those detained is difficult to ascertain. The Minister of Interior told *The New York Times* in early July that "there might be 3,000 people in Kuwaiti jails at this point."<sup>92</sup> This presumably did not include those detained in private homes.<sup>93</sup> It probably also did not include those detained by Military Intelligence, since the Ministry of Interior does not exercise control over military-intelligence detention facilities, to which access is severely restricted.

In addition to the 3,000 reported by the Minister, hundreds are known to have been released, including 1,270 through the offices of a single Kuwaiti general, according to reports received by Middle East Watch. Added to this are more than 1,500<sup>94</sup> who have been expelled, most of whom were detained before expulsion. Adding these figures to the number given by the Interior Minister would give a total of at least 5,800 detained between liberation and early July.

The number of detainees is still growing. The Kuwaiti government continues to articulate a belief that there are large numbers of Iraqi agents in Kuwait. In his address to the first session of the National Council on July 9, 1991, the Crown Prince and Prime Minister Shaikh Sa'ad al-Abdalla said that the government is continuing its quest to "purify the country of the evil elements that constitute a danger to its security."<sup>95</sup> The Minister of Interior told

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denies that he ever left Kuwait during the occupation and points out that he was born in Kuwait and had a resident permit valid until October 1991.

<sup>91</sup> According to Shaikh Ahmed Humoud al-Jaber al-Sabah, Minister of Interior, there were 70 Egyptians in Kuwaiti jails accused of "illegal entry into the country or cooperation with the Iraqi occupation." AFP, June 17, 1991. Other than this figure, which the Minister provided after being questioned by Egyptian reporters -- part of a campaign in the Egyptian press about conditions of detention of Egyptians in Kuwait -- no breakdown of nationalities has been offered by Kuwaiti authorities.

<sup>92</sup> John H. Cushman Jr., "Kuwait still perceives Iraqis as a threat," *The New York Times*, July 7, 1991.

<sup>93</sup> Human rights observers told MEW in June that the basements of the palaces of some of the junior members of al-Sabah family were still being used for detention.

<sup>94</sup> Press reports put the number of those deported at 2,000 in late June. See for example *Le Monde*, June 25, 1991. Since then, more have been expelled. See the discussion below under Summary Deportations.

<sup>95</sup> From the text of the speech as distributed by KUNA and published in *Sawt al-Kuwait*, July 10, 1991, translated by MEW.

*The New York Times* in early July that "the biggest internal security threat" is the presence of "Iraqi agents" suspected of hiding in Kuwait. He said that he is making a special effort to round up Iraqi "agents," and that one or two were being arrested almost everyday.<sup>96</sup> More frequent roundups of foreigners for deportation are expected in the following months, particularly after October 31, when the Kuwaiti government has decreed that all resident permits will expire unless renewed, regardless of the original expiration date.<sup>97</sup>

Most of those apprehended were detained without an arrest warrant or any other mechanism to protect against arbitrary arrest. Although the government announced at the end of March that all house searches had to be authorized in advance in writing, no such procedure was required for arrests.

Most of these arrests were plainly arbitrary. For example, Middle East Watch representatives witnessed the arrest of several people simply because they were of a nationality deemed sympathetic to Saddam Hussein or because they had answered questions in ways deemed impertinent by soldiers who themselves were rude and aggressive toward those of such nationalities.

Other examples of apparently arbitrary detention include the following:

- o On August 6, 1991, a Palestinian man, whose name is being withheld by Middle East Watch, was arrested for the fourth time after he gave an interview to a group of Western journalists. One of the journalists, a Dutch free-lance film-maker, told Middle East Watch that they interviewed him on August 3 about his previous imprisonment. He said that the man they interviewed had been so severely beaten on the face that he had lost the sight of one eye and he also had cigarette burns in his body. During the interview and afterwards, the family received threats from plainclothes State Security policemen, and on August 6 the man they interviewed was arrested by the State Security Secret Police.<sup>98</sup>
- o Health professionals, including at least six doctors,<sup>99</sup> were detained for no apparent reason other than their nationality and the fact that foreign health workers were among the few foreigners who continued to work and move about following the liberation of Kuwait, making them easy targets.
- o A Kuwaiti-born Palestinian lab technician at al-Razi Hospital, Semir Hemdan, 35, was seized at the hospital on March 10 by armed men in military uniform, taken to a tent

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<sup>96</sup> *New York Times*, July 7, 1991.

<sup>97</sup> See more below under Summary Expulsions.

<sup>98</sup> MEW interview, August 25, 1991.

<sup>99</sup> Doctors reported to MEW to have been detained or missing include Nazmi Khorsheid, Nehad Abu Rabi', Sa'id Belal, Walid Abul Ghogha, Maher Abu Sido and Abed Abu Ghussain.



near a checkpoint and beaten severely.<sup>100</sup> He was shuttled through a series of detention facilities, including Shemlan ibn Ali Elementary School, which was used as a temporary detention center. He then was taken to Geeone detention facility and later to the Juvenile Detention Facility, where he is still being held. During the first two months of detention he was held incommunicado but later both his wife and a lawyer were able to see him. They found that he had been severely beaten and accused of collaboration, based on evidence supplied by a Kuwaiti colleague.<sup>101</sup> He is awaiting trial by a state-security court. Even though conditions of his detention have improved, he still reports poor treatment and denial of medical attention.<sup>102</sup>

- o Bessam Fet-hi Abdel Halim, 30, a Kuwaiti-born Palestinian engineer in the Ministry of Electricity--Department of Technical Projects, and a graduate of the Technological University in Baghdad, was arrested at his home in al-Nugra on April 22. He was taken to al-Nugra North Police Station where he was kept for a week and severely beaten. He later was taken to Bayan Police Station where he is still being kept. His family visited him in July and reported that he was being pressured to sign a confession and accept deportation instead of trial.<sup>103</sup>
- o Even those formally charged with collaboration offenses often appear to be held on the basis of dubious evidence. Malek al-Igla, an Iraqi, was arrested for collaboration, according to a Kuwaiti human rights monitor, even though he had lived for 20 years outside Iraq and was known to be opposed to Saddam. Shortly before the Iraqi invasion, he was granted a one-month visa, valid until August 9, 1990, to visit Kuwait from his exile in Tunisia. He was still in Kuwait when Iraq invaded on August 2 and had to live in hiding throughout the occupation. Upon the liberation of Kuwait, he wanted to leave Kuwait but was barred. He has been detained since early March and is reportedly being held in the Juvenile Detention Facility.<sup>104</sup>
- o Many of those found guilty of collaboration offenses by the martial-law tribunal were convicted on the basis of tortured confessions. For example, on June 20, the Fourth Martial Law Court sentenced Malek Muhammed Ahmed Mas'ood, a 15-year-old Kuwaiti-born Palestinian, to 12 years' imprisonment followed by deportation. He was accused of having joined a Palestinian militia, received weapons training, and possessed a gun for the purpose of aiding the Iraqi occupation. Two of his brothers, Ma'moon and Aymen, in their early 20s, were sentenced to death (later commuted to life imprisonment) in the same case, one of them in absentia. According to his family, Malek was tortured to

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<sup>100</sup> His car was also confiscated.

<sup>101</sup> He continued to work during the occupation, according to his wife, but the Kuwaiti government-in-exile itself called on health workers to continue working, as an exception to the general boycott.

<sup>102</sup> MEW interviews, March 24, May 28 and July 17, 1991.

<sup>103</sup> MEW interviews, May 9, June 14 and July 13, 1991.

<sup>104</sup> MEW interview May 26, 1991.

extract a confession to convict his brothers. An older brother, Semir, a U.S. citizen who had lived in Kuwait most of his life, told MEW that "all the charges were false: they never joined any Palestinian organization and none of them ever possessed weapons or knows how to use them." He said that a Kuwaiti business partner, who was ready to testify on their behalf, was never allowed to address the court.<sup>105</sup>

## **Prison Conditions**

### **The Military Prison**

According to a Western official who was personally familiar with the facility, torture was systematic at the Military Prison during the month that it was used following liberation. "There was a lot of brutality: all detainees were beaten up," he said. He described extremely crowded conditions: 164 in a room five by five meters, leading to daily fights among prisoners. He described critical shortages of water and food, saying that prisoners were "dying very rapidly....because of those shortages and inadequate medical care."

A Kuwaiti who was detained at the Military Prison for two weeks in March described to Middle East Watch the harsh conditions there. The prison was run entirely by the Kuwaiti Army, he said. He was placed in a room four by seven meters with about 170 other people: Iraqis, Palestinians, Egyptians, Maghrebis, Sudanese, Kuwaiti citizens and Bedoons. He said that after five days, Kuwaiti, Bedoon, Lebanese, Yemeni, Tunisian and long-term resident Sudanese prisoners were separated from the rest. The others, mainly Palestinians, Sudanese who had entered Kuwait with the Iraqi invaders, and Iraqi civilians, were gathered in one place. Members of the Iraqi military were in a third group. He estimated the total population of the prison to be around 1,000.

This former prisoner described regular beatings: virtually every soldier who passed by beat the prisoners. One day, as a prisoner who had been beaten lay on the floor in the hallway, he saw guards pass by and extinguish their cigarettes on his body. He said that he saw four people die as a result of torture, including a 14-year-old Palestinian boy and a young Bedoon man. He himself was severely beaten about the back, legs, and shoulders. When he was interviewed by MEW he had difficulty walking or standing and had bruises on several parts of his body.<sup>106</sup>

A Palestinian who was also detained at the Military Prison in March described it as a grave. He said that prisoners were kept 30 to a small room (2 by 1½ meters) or 80 to a mid-sized room (4 by 5 meters), and that the prison was dominated by "killing, blood, beating and over-population... We were destroyed there." Prisoners were served only "one very, very little

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<sup>105</sup> MEW interviews, June 27 and July 3, 1991.

<sup>106</sup> MEW interview March 27, 1991. He said that prison authorities released him but kept his documents and valuables. He had no plans to lodge a complaint for fear of reprisals.

meal" of plain rice, and were given 5 bottles of water a day for a room of 80 prisoners.<sup>107</sup>

The ICRC gained initial access to the Military Prison on March 23 but took more than a week to gain full access to the prisoners. The horror of this prison, made public by international humanitarian organizations<sup>108</sup> and by Kuwaiti human rights observers,<sup>109</sup> among others, led the Crown Prince to visit the prison in early April. He immediately ordered the transfer of all prisoners to other facilities. The transfer started on April 4: around 700 of the inmates were moved to the Juvenile Detention Facility. Later in the month, 80 more men and 25 women were similarly transferred. By the end of May, however, a Kuwaiti social worker and a former prisoner both reported to Middle East Watch that the Military Prison was still being used for detention.<sup>110</sup>

### **Juvenile Detention Facility:**

Originally used as a jail for young offenders, this building was used extensively by the Iraqi occupation authorities as a place of detention for all ages -- mainly as an intermediate processing center between police stations and long-term prisons in Iraq. Thousands were processed here during the occupation, including between 1,500 and 2,000 in the last week of the occupation. The Kuwaiti authorities continued to use it after liberation for both men and women of all ages.

Conditions at this facility are better than at the Military Prison: accommodations are less cramped and three meals a day are served.<sup>111</sup> While torture does not seem to be as systematic in this facility as it was at the Military Prison, one former detainee told Middle East Watch about mistreatment by the guards, including what he described as "night-time beating parties." Another prisoner who is still there told his family that, even though this prison was a considerable improvement over Geeone, prisoners were still being beaten and medical care was inadequate. In incidents reported to Middle East Watch, beatings of prisoners continued even in the presence of outside observers. A Kuwaiti social worker with access to the facility told

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<sup>107</sup> MEW interview on May 30, 1991 and written testimony dated May 25, 1991. This former prisoner also told MEW that there were 630 prisoners -- one fourth of them Palestinians -- at the Military Prison divided among 8 small and 5 middle-sized rooms.

<sup>108</sup> Middle East Watch informed Selaiman Majed al-Shahin, the Deputy Foreign Minister, of its concerns about this prison during a meeting on March 24, 1991 and subsequently submitted a written statement on March 27, 1991. Other humanitarian organizations also raised the subject with Kuwaiti officials.

<sup>109</sup> Dr. Ghanem al-Najjar, director of the Committee to Defend War Victims, discussed the conditions in this prison with the Crown Prince.

<sup>110</sup> MEW interviews, May 30 and June 7, 1991.

<sup>111</sup> A Kuwaiti social worker with access to this facility told MEW on June 1, 1991 that the meals were sub-standard but that the authorities did allow outside groups to supplement the diet and provide detainees with soap, cigarettes and clothes. Letters were also allowed, she said.

Middle East Watch that there were individual "punishment cells" of about one square meter where the detainee is placed for 24 hours at a time without food or water.<sup>112</sup>

The ICRC and families of detainees have access to most of this prison; families are allowed a visit every Thursday. However, families are not allowed to visit detainees in the Fourth Block, run by Military Intelligence. A special permit is needed from the Ministry of Defense to visit detainees in this section, but families have reported that their requests have been denied.

### **State Security Prison**

This prison is located in the former Civil Defense Building on the Sixth Ring Road, near the drive-in cinema, in Kuwait City. It is used as the headquarters of the State Security Secret Police (Mabaheth Amn al-Dawla) and has a series of holding cells, some of which are cage-like and exposed to the sun and the elements, including day-time temperatures that frequently exceed 100 degrees.<sup>113</sup>

The Kuwaiti government has refused the ICRC access to this facility, which is reported to hold around 300 prisoners, most in incommunicado detention.<sup>114</sup> For example, Basil Ali Dhaifalla, 20, a Palestinian college student, was arrested on May 8, together with his uncle Musa Mahmoud al-Wehsh, around 70, and two days later, his brother Muhammed, 19. Based on information provided by released prisoners, the family believes that the three are in the State Security Prison but visits have not been allowed and the Kuwaiti government has refused to acknowledge their presence.<sup>115</sup>

As part of a plan to reorganize all security forces, the State Security Secret Police is being reconstituted: unemployed youth are being recruited to serve in it, including elements described by human rights observers as unscrupulous, thus increasing the danger of further mistreatment of prisoners.

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<sup>112</sup> MEW interview, June 1, 1991.

<sup>113</sup> MEW was also told that there was a shortage of drinking water, but this could not be confirmed.

<sup>114</sup> A Kuwaiti human rights worker told Middle East Watch on August 24, 1991 that the number of detainees at the State Security Prison may be much higher than this estimate, saying that the 300 figure may represent the population of only one of the three main sections of this prison.

<sup>115</sup> MEW interviews, June 2 and July 17, 1991.

### **Geeone (the National Guard)<sup>116</sup>**

This large (one square kilometer) compound houses the National Guard and the Military Intelligence Unit. It is run by the National Guard and consists of two wings: the former Military Intelligence Detention Center and the former Human Resources Department. At least 75 detainees have reportedly been held there,<sup>117</sup> and some reports put the number of detainees at 200, including some in underground cells.<sup>118</sup> Accounts of some of the worst treatment, including rape and electric shock, emerge from this facility. After consuming large amounts of drugs and alcohol, guards are reported to engage in long night-time sessions of prisoner beatings. Water is scarce and the cells are extremely crowded -- ten inmates to a small room (1¼ by 2½ meters).<sup>119</sup>

Although the ICRC was allowed access to the compound, it has not been given access to the Military Intelligence section.

### **Deportation Prison**

Located at the Orthopedic Hospital intersection on al-Jahra Road, near the traffic police headquarters, in al-Shuwaikh, west of town, the Deportations Prison is a maximum-security facility, with some of the worst conditions in the country. It is surrounded by trees and not easily detected from the road. It has 12 solitary confinement cells and a main large cell, holding as many as 600-700 people. There are no beds or mattresses; prisoners are simply given a blanket each. There is only one refrigerator for the prison and no air conditioning. Fans hang from a very high ceiling but they do not seem to alleviate the unbearable heat and poor ventilation.<sup>120</sup>

According to published information attributed to a Western diplomat, this prison held 500 Palestinians in June.<sup>121</sup> Another published report put the number of all detainees at this facility at 600 or more, including many described as Iraqis. But according to this report, prison officials and family members indicated that most prisoners are Bedoons. There are said to be children and about 50 women in the prison, although most of the women awaiting deportation

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<sup>116</sup> The name of this facility is pronounced by Kuwaitis variously as Jay-one and Gee-one. According to *The Independent* of London (April 27, 1991), this military complex was built by the British in the 1950s, when Kuwait was still a protectorate, and named G-1. The report also attributed to former inmates the claim that this prison is controlled by junior members of al-Sabah family.

<sup>117</sup> MEW interview, May 23, 1991.

<sup>118</sup> *The London Observer*, April 22, 1991.

<sup>119</sup> MEW interviews, May 23 and May 28, 1991.

<sup>120</sup> MEW interviews with a former detainee and relatives of current detainees, June 28 and July 2, 1991.

<sup>121</sup> *The Washington Post*, June 12, 1991.

are kept in another prison.<sup>122</sup>

Because of the large number of people being held pending deportation -- 1,000 according to the Minister of Interior in early July<sup>123</sup> -- the main Deportation Prison at al-Shuwaikh has been filled beyond its capacity. Other facilities are reported to have been opened to handle the overflow, but no information is available on conditions there.

## Hospitals<sup>124</sup>

### Al-Farwaniyya Hospital

According to a report in *The Washington Post*, journalists saw 18 Palestinian, Iraqi and Sudanese detainees who were being treated at the heavily guarded trauma ward of al-Farwaniyya Hospital. According to a doctor quoted by the report, their injuries were "caused during their investigations by police. The police have been bringing people to this ward steadily since the liberation." The doctor explained that half of the 18 victims were treated for bullet wounds while the others suffered from cuts, bruises and burns. One man's leg had to be amputated because his wound, believed by the doctor to have been caused by torture, was not tended to early enough. The doctor said that, if asked to testify in court, he "would testify that these people were recently beaten by Kuwaiti police."<sup>125</sup>

Another reporter who also visited this ward saw six patients, including three Iraqis and one Egyptian. All had been beaten and tortured by Kuwaiti soldiers or police, according to attending doctors. They were guarded by armed soldiers and denied adequate medical treatment. The guards prevented a 60-year-old patient from talking to the reporter, who also saw a nurse, a 23-year-old Palestinian man, who had been shot in the mouth by a Kuwaiti soldier. Doctors said that the beating of prisoners continued after they were admitted to the hospital. The soldiers on guard cut the telephone lines and at times prevented doctors from seeing the patients.<sup>126</sup>

A Kuwaiti social worker who visited this ward -- known also as Ward 18 -- reported to Middle East Watch seeing a Palestinian treated there who was paralyzed as a result of torture. On a visit on May 23, the social worker saw four other Palestinians, two Iraqis, two Bedoons and one Sudanese. She also reported that a Palestinian in his thirties had died in Ward 18 in early

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<sup>122</sup> *The New York Times*, June 11, 1991.

<sup>123</sup> *The New York Times*, July 7, 1991.

<sup>124</sup> In addition to Mubarak al-Kabir and al-Farwaniyya hospitals, Ward 8 of al-Razi Hospital also reportedly hold torture victims, according to information given to MEW.

<sup>125</sup> John Arundel, "Kuwaiti Leader Extends Martial Law: Prime Minister Says Vigilante Actions Against Foreigners Must Stop," *Washington Post*, May 28, 1991.

<sup>126</sup> Jack Kelly, "Torture victims held in Kuwait," and "Kuwait's Ward 18: No haven from pain," both in *USA Today*, May 30, 1991.

May as a result of complications brought about by beatings at a police station.<sup>127</sup>

After the role of Ward 18 became known, Kuwaiti officials decided to send new torture patients to other hospitals, according to doctors.<sup>128</sup>

### **Mubarak al-Kabir Hospital**

On March 21, while a Middle East Watch representative was at this hospital investigating the records from the period of the Iraqi occupation, he was told that there were prisoners being tortured in the hospital itself, at the heavily guarded Orthopedics Ward. In a room called the Investigations Room,<sup>129</sup> he saw five prisoners with clear marks of beatings on their arms and faces. The armed guards refused to let them answer any questions, but a doctor at the hospital later explained that the room was used by Kuwaiti security forces to interrogate and torture prisoners. The Kuwaiti doctor, who had been active in organizing resistance to the Iraqis, said, "After seeing all these victims of torture, I see that Kuwait after liberation is producing many little Saddams."

In another, more secluded wing of the Orthopedics Ward, guarded by heavily armed, mixed civilian-military men, there were two prisoners tied to their beds with intravenous tubes connected to their arms. They looked emaciated and one had a broken nose, red bruises on his face and dark contusions on other exposed parts of his body. Neither was capable of answering any questions; their mumbles were barely audible. One of the guards said that the two were Iraqi soldiers who had had a traffic accident. But when the officer in charge, Lieutenant Nasser al-Belushi, came into the room he said, in answer to a question about the reason they had been tortured, that they were Iraqi soldiers who had raped Kuwaiti girls.

Abdalla Sa'ad Ibrahim, a 17-year-old Palestinian high-school student, said that he was arrested while inside the Mubarak al-Kabir compound on March 18. He was accused of trespassing and spying. He was taken to the Guards Room outside the Emergency Entrance, handcuffed, beaten for hours with a two-inch-thick stick, and tortured with cigarettes extinguished on his body. A Middle East Watch representative saw two burns left by the cigarettes on his chest and several welts from the beatings.<sup>130</sup>

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<sup>127</sup> MEW interview, on June 10, 1991.

<sup>128</sup> *USA Today*, June 12, 1991.

<sup>129</sup> In every Kuwaiti hospital there is a room for questioning accident victims. During the Iraqi occupation and after liberation, the primary function of these rooms became interrogating security suspects.

<sup>130</sup> MEW interview, March 21, 1991. For press accounts of non-medical uses of Mubarak al-Kabir Hospital, *see also*, Nora Boustany, "Kuwaiti Hospital Said to Cover Up Torture," *Washington Post*, March 22, 1991 and Greg Myre, AP, March 22, 1991.

## Teachers' Association Building in al-Jahra

The Celebrations Hall (Salat al-Afrah) of the Teachers Association in al-Jahra has been taken over by the Martyr's Brigade (al-Sheheed Brigade) of the Kuwaiti Army for use as a detention center, according to eyewitnesses. A group of journalists and social workers discovered in April that this place was being used to torture prisoners, including Iraqi POWs. Neighbors told them of screams at night and they themselves saw the tools of torture -- including falaqa, sticks and electric wires -- and fresh blood on the carpets. They confronted the military commander of the unit who said, "We have to use force to make them confess. They would not confess without the use of force."<sup>131</sup>

## Other Places of Detention

- o Most notorious among police stations for torture and harsh treatment of prisoners are Sabah al-Salem, al-Qadesiyya, Bayan (at least 15 prisoners), al-Jahra South, Khaitan (54 prisoners) and Selwa police stations.<sup>132</sup> For example, in an interview on March 22, a former detainee described to Middle East Watch the systematic use of torture at Khaitan Police Station, which held at the time more than fifty prisoners, including Palestinians, Sudanese, Egyptians, Iraqis and one Kuwaiti. They were kept in two rooms, 80 square meters each, but four other prisoners were kept in separate individual cells.
- o Schools have also been used for detention, especially by militias working in coordination with the military. A number of Bedoon POWs were detained in the Religious Institute after they had been repatriated from Iraq. This Institute is used almost exclusively for Bedoons, including families, such as the wife, son and daughter of the slain actor Mesafer Abdel Kerim.
- o Vocational Training Center in al-Farwaniyya is used as a detention center, according to a Kuwaiti social worker who interviewed relatives of a prisoner kept at this center.<sup>133</sup>
- o Government guest houses, located west of town in al-Req'i, between the extensions of the Fourth and Fifth Ring Roads, are also used as places of detention. Human rights workers interviewed by MEW estimated, based on information provided by military sources, that at least 25 detainees were kept in these houses.

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<sup>131</sup> MEW interviews, May 28 and June 30, 1991. See also a detailed description of this place by an eyewitness in Robert Block's, "Kuwaitis rival Saddam torturers in brutality," *The Independent* (London), April 19, 1991.

<sup>132</sup> MEW interviews.

<sup>133</sup> MEW interview, May 22, 1991.



## Martial-Law Trials of Suspected Collaborators

During the martial-law trials that lasted from May 19 to the end of martial law on June 26, 74 cases were resolved involving 164 defendants, 122 of whom were present. 118 were convicted and 46 were acquitted. Sentences ranged from one year in jail to the death penalty; 29 were sentenced to death but later commuted to life imprisonment. The defendants included 47 Jordanians or Palestinians with Jordanian passports, 6 Palestinians with other documents, 47 Iraqis, 22 Bedoons, 20 Kuwaiti citizens, 3 Lebanese, and 5 of other nationalities.<sup>134</sup> The remaining 14, who were not present at the trials, were of unknown nationality. With one notable exception,<sup>135</sup> Kuwaiti defendants received lighter sentences compared to the others.

Despite the Kuwaiti government's stated willingness to conduct the trials of suspected collaborators in accordance with basic standards of fairness,<sup>136</sup> the actual proceedings were dominated by serious violations of the fair-trial principles set forth in Article 75 of Protocol I to the Geneva Conventions, which Kuwait has ratified. The courts relied primarily on confessions extracted through torture. They denied defendants sufficient time to consult with lawyers. Defendants and their lawyers were not given an opportunity to examine the evidence before trial, to cross-examine prosecution witnesses, or to present witnesses in their defense. The courts also seemingly ignored the varying degrees of loyalty required of Kuwaitis and non-Kuwaiti citizens toward the Kuwaiti government-in-exile.

### The Use of Confessions Obtained by Torture

A substantial majority of the defendants on trial complained of severe beatings to induce them to confess to alleged crimes of collaboration, and signs of torture were clearly visible on some of them. These complaints are also corroborated by extensive testimony collected by Middle East Watch showing the prevalent and systematic use of torture in Kuwaiti detention

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<sup>134</sup> They were an Egyptian, a Pakistani, a Saudi, a Syrian and a Turk.

<sup>135</sup> Ibtişam Bertu Selaiman al-Dekhīl, a Kuwaiti citizen, was sentenced to death (later commuted to life imprisonment) in *al-Nida'* case.

<sup>136</sup> For example, the Minister of Justice, Ghazi Obaid al-Sammar, told KUNA, the official news agency, "The accused are accorded fair trials, with the right of legal defense respected with the help of lawyers. Trials are being conducted in public, with the press and other media present, unless the courts decide to hold secret sessions for the purposes of public order." May 23, 1991. On May 22, Dhari Abdalla al-Othman, Minister of State for Cabinet Affairs, told KUNA, "Kuwait is diligent in applying the rule of law and its absolute belief in human rights, regardless of nationality, gender or beliefs." By contrast, despite the clear constitutional presumption of innocence in Article 34 of the Kuwaiti Constitution, some Kuwaiti officials apparently believed that their laws "do not call for customs like ...presumption of innocence until guilt is proven." (John H. Cushman, "Courts Watched Closely as Kuwait Resumes Trials," *New York Times*, June 1, 1991.) Although this view contradicted the public stand of the Kuwaiti government, it more accurately reflects the practice of security officers after liberation, who usually assumed the guilt of their suspects and condoned torture to extract confessions to prove that guilt.

centers.<sup>137</sup> However, rather than discard all confessions secured by coercion -- the minimum required by fair-trial standards -- the prosecution and the courts relied on these confessions as the main source of evidence. For example, in the case of Omar Essayed Muhammed Omar, a 40-year-old Egyptian sentenced to death (later commuted to life imprisonment) on June 13 for stealing, looting and informing on Kuwaiti soldiers, the prosecutor argued that "his confession is the master of all evidence that proves that he committed the crimes attributed to him." In court, however, the defendant showed obvious signs of incoherence which, according to a report from an official pathologist submitted by the defense, were caused by severe beating during interrogation.<sup>138</sup> In numerous other cases, defendants complained of coerced confessions, and several displayed their physical wounds to the court. Use of such confessions violates the right not to be "compelled to testify against [one]self or to confess guilt."<sup>139</sup> It also tacitly condones violations of the prohibition against torture.<sup>140</sup>

### The Lack of Direct Evidence

In very few cases did the prosecution introduce direct evidence against the accused, particularly on the often critical issue of whether the defendant sufficiently resisted frequently severe pressure to cooperate with Iraqi authorities. For example, on June 8, Menahi al-Shemmeri, a radar technician in the Kuwaiti Air Force, was sentenced to death for joining the Iraqi Popular Army and providing information to the Iraqi occupiers. He conceded joining the Popular Army but claimed that the Iraqi occupiers had forced him to do so. No evidence was presented to rebut this coercion defense.

Similarly, in the case involving *al-Nida'*, the occupation newspaper, most of the defendants claimed that they had been forced to work for the newspaper (some also asserted that their work for the newspaper had not substantially advanced its propaganda purposes, and a few denied altogether having worked for the newspaper). With the exception of one of the 24 defendants, against whom direct witnesses were called, the only evidence offered by the prosecution to rebut the coercion defense was the testimony of a "secret source," as presented by an intelligence officer. The intelligence officer, who displayed only superficial knowledge of and considerable confusion over the facts of the case, refused (with the court's approval) to reveal essential facts about the secret source which might have revealed the reliability of its information. Pointed defense requests for such information were rebuffed. Such vague hearsay evidence conflicts with the right "to examine, or have examined, the witnesses against" an

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<sup>137</sup> See above under Torture and Ill-treatment.

<sup>138</sup> MEW interview, June 15, 1991.

<sup>139</sup> Protocol I, Art. 75; International Covenant on Civil and Political Rights, Art. 14

<sup>140</sup> Article 31 of the Kuwaiti Constitution prohibits "torture or degrading treatment," and Article 34 forbids "[t]he infliction of physical or moral injury on an accused person." The Fourth Geneva Convention prohibits coercion to obtain information (Art. 31) and torture (Art. 32). Similar prohibitions are in Article 75 of Protocol I and Article 7 of the Covenant on Civil and Political Rights.

accused<sup>141</sup> and is incompatible with the direct and reliable evidence that must form the basis of any conviction.

As one defense lawyer argued in summation, "The officer knew nothing about the defendants except for what he learned from the secret source. There are too many people whose lives are in the hands of that secret source. We can't uncover that secret source. That's very dangerous." Another defense lawyer asked the court, "Do you think you should not believe these 23 people and believe that secret source?"

Nevertheless, on June 15, five of the *al-Nida'* defendants against whom no direct evidence was presented rebutting their coercion defense were sentenced to death, and another ten were sentenced to prison terms of ten years at hard labor followed by deportation. The court dismissed the lack of direct evidence rebutting the coercion defense with the unsatisfactory assertion that the law gave the court discretion to determine the sufficiency of the evidence.

### **The Lack of Consideration of the Defendants' Varying Duties of Loyalty**

The failure to present direct evidence to rebut claims of coercion is particularly remarkable because the vast majority of defendants were Palestinians, Iraqis and Bedoons whom the Kuwaiti government did not recognize as Kuwaiti citizens and thus who arguably did not have the same duty to resist Iraqi coercion to cooperate as recognized Kuwaiti citizens. Perhaps the most difficult issue facing the martial courts was the determination of how much pressure a defendant should have endured before agreeing to cooperate with Iraqi authorities. The resolution of this issue should depend to some extent on the nationality of the accused and the duty of loyalty that he or she could fairly be expected to owe a government-in-exile which, as far as they knew, might never return to power. Such distinctions have been drawn in analogous situations by both the Third Geneva Convention (Articles 87 and 100) and the Fourth Geneva Convention (Articles 68 and 118), both ratified by Kuwait. As a factual matter, most of the defendants raising the coercion defense insisted that they indeed had been loyal to Kuwait and had tried to resist Iraqi pressure. But those assertions are distinct from the legal defense that these defendants could not fairly be expected to have owed the same degree of loyalty -- and thus to have mounted the same degree of resistance to Iraqi pressure -- as recognized Kuwaiti citizens.

Although at least one court showed some appreciation of this distinction, in the course of its questioning of the defendants in the trial of the actors held on May 29, the courts in other cases showed no visible appreciation of the differing degrees of loyalty that might fairly be expected from those not recognized as Kuwaiti citizens. For example, the court in the *al-Nida'* case rejected this distinction by stating: "[Kuwait] provided these criminals with all sorts of welfare, prosperous livelihoods and justice....The least that could be expected of them in Kuwait's hour of need was to stand by it and help alleviate the injustice inflicted on it."

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<sup>141</sup> Protocol I, Art. 75; Covenant, Art. 14

### **The Lack of Adequate Notice of Proscribed Conduct**

Most of the defendants in the trial of suspected collaborators were charged with violating Kuwait's pre-existing state-security offenses. The provision most frequently relied upon prohibits any deed that endangers the independence of the country, its unity or the integrity of its territory. Such a sweeping provision should have been construed carefully to ensure that it gave adequate advance notice of proscribed conduct, so as not to run afoul of the requirement that "no one shall be accused or convicted of a criminal offense on account of any act or omission which did not constitute a criminal offense under the national or international law to which he was subject at the time when it was committed."<sup>142</sup> However, in several of the cases observed by Middle East Watch, defendants were charged as collaborators for such acts as repairing Iraqi vehicles, maintaining *al-Nida's* printing facilities, or performing minor services for the occupation newspaper; while some of these accused were acquitted, others were convicted.

Similarly, on June 17, Hamda As'ad Youssef, the Jordanian principal of Tulaitela Girls High School, was sentenced to death (later commuted to life imprisonment) for keeping the school open during the occupation in defiance of a declared general boycott and for applying to work (but never actually working) for *al-Nida*. Neither act, and particularly the charge relating to the school, was specifically proscribed by the state-security law, that is, it could not reasonably be construed as endangering the independence or integrity of Kuwait.

In no case of which Middle East Watch is aware did the courts show any visible interest in examining whether Kuwait's law gave sufficiently clear notice that such acts were prohibited.

### **The Lack of Opportunity to Consult with Counsel**

Following the first day of trials, the courts did generally appoint defense counsel for those who had not retained private counsel and then adjourned the case to provide newly appointed counsel an opportunity to consult with the defendant and prepare a defense.<sup>143</sup> However, in several cases observed by Middle East Watch, the presiding judge appointed defense counsel and then immediately began vigorously cross-examining the defendant before counsel had been given an opportunity to consult with their clients. This practice was particularly apparent in the cases presided over by the First Martial Law Court under the direction of Chief Judge Mohammed Jassem ibn Naji. Moreover, all defendants appeared to have been questioned by the prosecutor or police investigators without the opportunity to consult with counsel or even notice that they had a right to do so. These practices violated Kuwait's duty to "afford the accused before and during his trial all necessary rights and means of defense."<sup>144</sup>

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<sup>142</sup> Protocol I Art. 75; see also Covenant Art. 15.

<sup>143</sup> On the first day, May 19, 1991, the trial proceeded and ended before counsel for several defendants had any opportunity to consult with their clients.

<sup>144</sup> Protocol I Art. 75; see also Covenant Art. 14.

While some defendants in the martial-law were able to choose their own attorneys, the rest had court-appointed lawyers. A family who hired a private attorney told Middle East Watch that it had to pay 4,000 dinars (\$13,800) to a lawyer who represented two brothers before a martial-law court. Another family had to pay 3,000 dinars (\$10,350) to a lawyer representing one defendant. Both families had to borrow from relatives living outside Kuwait. Many defendants and their families may not be able to pay these amounts, since most non-Kuwaitis have not been paid since August 2, 1990 because the Kuwaiti government has terminated the contracts of all of its foreign civil servants retroactively from that date.

Kuwaiti lawyers who announced their intention to defend suspected collaborators were subjected to abuse and threats.<sup>145</sup> Whether because of this or because of the unpopularity of the clients,<sup>146</sup> there was only a small number of lawyers who were willing to be appointed to represent defendants before the martial-law courts. Despite the need for additional lawyers, the Kuwaiti government refused to allow lawyers from other countries, with similar legal systems to come to Kuwait to defend suspects. The Arab Lawyers Union and the Jordanian Bar Association both tried to send lawyers to Kuwait but the Kuwaiti embassies in Cairo and Amman refused to grant them visas.<sup>147</sup>

### **The Lack of Appeal to a Higher Court**

According to the martial-law decree issued on February 26 and renewed for thirty days on May 26, defendants tried before martial-law tribunals had no right of appeal. Their sole recourse is to a panel of three "legal counselors" established to advise the Crown Prince, in his capacity as martial law governor, whether to exercise his discretionary powers of clemency; their counsel was purely advisory and could be ignored. Under the Kuwaiti Constitution, there is also an opportunity for a discretionary pardon by the Emir.<sup>148</sup> The exercise of these powers was not guided by clear legal standards and as such could not substitute for a proper appeal, as required by Article 14 of the International Covenant on Civil and Political Rights. Furthermore, the procedures for review did not allow defense counsel to present arguments on behalf of their clients. Appeals are especially important in light of the severity of the punishments imposed.

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<sup>145</sup> See, for example, Lee Hockstader, "Justice Goes on Trial in Kuwait," *Washington Post*, April 3, 1991.

<sup>146</sup> U.S. Army reservist Lt. Col. Edward McCarty, a New York state court judge who was a legal adviser to the U.S. Combined Civil Affairs Task Force, which advised the Kuwaiti government on legal matters, told the *Washington Post* (April 3, 1991), that in terms of community reactions to the trials, "this is a child molestation murder case times hundreds."

<sup>147</sup> MEW interview with Farouk Abu-Issa, Secretary-General of the ALU, June 5, 1991; MEW interview with Asma Khader, member of the executive committee of the Jordanian Bar Association, June 3, 1991. The Arab Lawyers Union is a Cairo-based federation of the national bar associations of most Arab countries. It was established in 1944.

<sup>148</sup> Article 75.

In the end, this clemency process yielded reaffirmations of every conviction passed -- all on the same day, before any attorney is known to have submitted petitions for clemency to the Crown Prince. The Crown Prince is to be commended for commuting the death sentences to life imprisonment, but there is no evidence that the "legal counselors" were involved in this process.

### ***Trials in Absentia***

The courts also violated the right of a defendant to be tried in his or her presence, which is one of the requirements of a fair trial under international law.<sup>149</sup> Forty-two defendants, including 13 who were sentenced to death but later commuted to life imprisonment, were tried *in absentia*. While it is reasonable to assume that a defendant who has formal notice of charges against him and then flees the country can be deemed to have waived his rights, the courts made no apparent inquiry into whether the absent defendants had been formally notified that charges were pending against them when they left the country. Since the Kuwaiti government had not published a list of all accused -- indeed, international observers who closely followed the trials were unable to obtain such a list -- notice of the need to stand trial cannot be assumed. Despite this, the absence of some defendants was construed by the courts as proof of their guilt, as in the case of Ahmed Fadi al-Husseini, who worked as editor-in-chief of *al-Nida'* and reportedly fled the country before liberation. On June 15, he was sentenced to death by the First Martial Law Court, later commuted to life imprisonment. "His escape from the country," the court's decision stated, is "conclusive proof of his guilt; he fled to escape his deserved punishment."

A source in the Ministry of Justice told Middle East Watch that the Acting Public Prosecutor, Hamed al-Othman, had announced that Kuwait would ask member countries of Interpol to extradite those accused in state-security cases who have fled the country. That would include the 44 defendants who were sentenced in absentia by martial-law courts in addition to suspects in other cases.

### **Unjustified Use of Martial-Law Tribunals**

In several cases there was no apparent justification for trying the defendants before martial-law tribunals. For example, on June 5, two Yemeni boys aged 11 and 12 were tried for stealing clothes from an apartment. There is no evident reason why such cases could not be sent to the regularly constituted courts.

In addition, in at least two cases, defendants faced trial before martial-law tribunals for what should have been the protected exercise of their right to free speech. Farraj Nassar al-Rekaibi, a former Kuwaiti soldier and a Bedoon who became a hero for his resistance activities, was charged with "resisting the authorities and threatening the peace by spreading rumors" because of his public criticism of government decisions; although he was acquitted on June 3, the prosecutor should never have brought the charge. Another defendant, Hamza Abdel Fattah

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<sup>149</sup> Protocol I Art. 75; Covenant Art. 14.

Ahmed, was tried and convicted on June 20 for "insulting the person of the Emir."

### **Fate of the Acquitted**

A Ministry of Justice official told Middle East Watch that those acquitted would all be released. Starting June 30, he said, the Public Prosecutor's Office began to notify prisons where suspects were held to carry out the decisions to release them.<sup>150</sup> However, most non-Kuwaiti citizens have not been released following their acquittal but have been held pending deportation. In fact, according to Ghazi Obaid al-Semmar, Minister of Justice, "The Minister of Interior has discretionary authority to deport people who are suspect or whose presence constitutes a danger.... [T]hose who have been acquitted will be deported according to this procedure."<sup>151</sup>

## **Trials of Suspected Collaborators After Martial Law**

### **Trials Before State Security Courts**

72 cases involving over 200 suspects who were charged by the martial-law prosecutor remained unresolved by the time martial law was lifted and martial-law courts disbanded on June 26. All these cases are being reviewed by the civilian Public Prosecutor Office, which will decide whether to present them for trial before criminal courts or the State Security Court.<sup>152</sup> In mid-August, there were around 300 Palestinians, Iraqis, Kuwaitis, Sudanese and Egyptians awaiting trials before state security courts, according to a Kuwaiti official.<sup>153</sup> More are expected to be charged with state security offenses from among the thousands of detainees still in Kuwaiti prisons.

Initially, trials before the State Security Courts were scheduled to start on July 26, but have not yet resumed.<sup>154</sup> They are expected to resume in September; the reason for the delay reportedly being that the government was studying whether to institute an appeal process for verdicts passed by the Court, which has been criticized in the past for not affording

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<sup>150</sup> MEW interview, July 6, 1991. The official, who requested anonymity, said that neither the civilian Public Prosecutor Office nor the Ministry of Justice knew the place where every prisoner was kept, since most cases were not handled by the civilian PPO.

<sup>151</sup> From an interview with *Sawt al-Kuwait*, June 26, 1991.

<sup>152</sup> MEW interview with an official at the Ministry of Justice, July 3, 1991.

<sup>153</sup> Reuters, August 14, 1991.

<sup>154</sup> MEW interview, with Muhammed Hussein al-Enezy, a Kuwaiti lawyer, July 16, 1991.

defendants the right to appeal.<sup>155</sup>

The State Security Court procedure in the past suffered from problems similar to those of the martial-law courts. It was staffed by part-time judges who did not have security of tenure, met in secret most of the time,<sup>156</sup> and issued decisions, including death sentences, which were not subject to appeal.<sup>157</sup> The State Security Secret Police in the past used torture to extract confessions that were later admitted as evidence by the State Security Court.

Among those to be tried by the State Security Court are the Kuwaiti military officers who were members of the provisional government formed by Iraq on August 8, 1990.<sup>158</sup> The Kuwaiti Minister of Interior said that Kuwaiti authorities had completed interrogating the officers and that the State Security Court will decide their fate.<sup>159</sup>

On August 12, 1991 the Kuwaiti government approved regulations establishing a second state security court and granting defendants the right to appeal the decisions passed by state security courts. Official Kuwaiti spokesmen said that the new regulations have in effect established an appeals court for state security offenses.<sup>160</sup>

### The Death Penalty

Defendants before the State Security Court face the death penalty for offenses that are loosely defined as "acts adversely affecting the independence of the country, its unity, or the integrity of its territory."<sup>161</sup> The Kuwaiti Public Prosecutor, Hamed al-Othman, said that

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<sup>155</sup> MEW interview with Yahya Mattar, KUNA acting bureau chief in Rome, August 8, 1991. Muhammed al-Bannai, the Kuwaiti Public Prosecutor, also expected the state security courts to start in September. *Sawt al-Kuwait*, August 14, 1991.

<sup>156</sup> The opening and closing sessions were sometimes open to the press or other outside observers.

<sup>157</sup> Even though the State Security Court in the past condemned defendants to death, the death penalty was never carried out.

<sup>158</sup> Most of them were Kuwaiti military officers and some of them are reported to be in Iraq (MEW interview May 21, 1991).

<sup>159</sup> The Minister of Interior also said that the provisional government was set up under pressure and that "Saddam gave them salaries and watches, which they handed over to the Kuwaiti Government upon their arrival in the country." This conciliatory comment is in sharp contrast to the condemnatory comments about other defendants accused of lesser offenses. From an interview with the Kuwait Message, a daily program prepared by the Kuwaiti Ministry of Information and broadcast over Saudi TV on May 15, 1991. FBIS, May 16, 1991.

<sup>160</sup> *Sawt al-Kuwait*, August 14, 1991; Reuters, August 12 and August 14, 1991; AP, August 12, 1991.

<sup>161</sup> From the State Security Act of 1970, as published in *Sawt al-Kuwait*, May 21, 1991.



commutation of the death sentences ordered by the martial-law courts does not mean that in the future either criminal courts or the State Security Court will not impose the death penalty if warranted. Providing an example of those who will get the death penalty, al-Othman said, "Whenever a judge ascertains that there is enough evidence that a particular defendant has joined the [Iraqi] Popular Army and participated in enemy military activities, he can according to the law sentence the defendant to death."<sup>162</sup>

Middle East Watch opposes the death penalty when it is imposed in proceedings that are not in accordance with due process of law or when it is grossly disproportionate to the crime.<sup>163</sup> In addition, when there is no proper judicial appeal to a higher court, imposing the death penalty is contrary to the U.N. Economic and Social Council Resolution No. 50 of 1984, which states, "Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction," (Article 6).

### Summary Expulsions

Since liberation, more than 1,500 residents of Kuwait have been deported, including Iraqis, Palestinians and Bedoons. These expulsions violate several provisions of the Fourth Geneva Conventions, because of their inhumane manner, because Kuwait has expelled some who said they would face persecution in Iraq, and others who are refugees or stateless and should not be expelled.

Most of those deported since liberation seem to have been individuals who were rounded up, with their families in some cases, as security risks, or as suspects in the campaign against collaborators with the Iraqi occupiers. Collaboration has been broadly defined to include almost any form of dealing with the Iraqi authorities. Moreover, as noted above, the methods employed to prove such collaboration are unreliable and legally substandard.

Even those who were cleared of charges without trial or were acquitted by martial-law courts have been deported or are being held pending deportation. A spokesman for the Ministry of Justice told a government newspaper that those acquitted would be deported. "Just because they were acquitted does not mean they are not still suspect. It only means that there was not enough evidence for their guilt," he explained.<sup>164</sup>

A typical example of those who were acquitted but then deported was Malek Nureddin Issa, a Palestinian with a Jordanian passport who had lived in Kuwait for 32 of his 35 years. His

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<sup>162</sup> *Sawt al-Kuwait*, July 3, 1991.

<sup>163</sup> International Covenant of Civil and Political Rights, Article 6(1) and (2).

<sup>164</sup> Nahess al-Enezy, a spokesman for the Ministry of Justice, in *Sawt al-Kuwait*, June 27, 1991. Another spokesman for the Ministry of Justice told MEW on July 6, 1991 that the Public Prosecutor Office would order the release of those acquitted but the Minister of Interior would still have discretionary authority to deport them and keep them in jail pending deportation.

wife, 31, a Palestinian, was born in Kuwait and so were his four children, 6, 4½, 2½ years and 7 months. He worked as an oil-well maintenance man at an oil company. He reported to work after liberation but was arrested on March 11 and accused of collaboration. On May 18, his family was called and told that he had been cleared, without trial, of the collaboration charges. They went to the Palace of Justice to pay a 50-Kuwaiti-dinar bond but were told that he would be deported because he had gone to Jordan several times during the occupation. This would mean that he re-entered Kuwait without permission of the Kuwaiti authorities and thus deportable, even though his residence permit has not expired.<sup>165</sup>

Issa was held for weeks at the Deportation Prison in al-Shuwaikh without any notification to his family of his whereabouts. They first heard from a friend that he was being held at the Deportation Prison. They were able to see him very briefly<sup>166</sup> after securing a permit from the Deportation Authority, which they were not granted until they had paid 130 Kuwaiti dinars for his air fare to Jordan. He told them that conditions were so bad -- overcrowding, extreme heat, mistreatment by the guards, and lack of ventilation -- that he wanted to be deported.

Expulsions started shortly after the liberation of Kuwait. During March, several bus loads of foreign residents were summarily expelled. A Middle East Watch representative witnessed one such incident on March 16. Twenty-three Algerian, Tunisian, Sudanese and Somali detainees were taken by Kuwaiti military policemen from a detention center to the Iraqi border town of Safwan, which was controlled by the U.S. Army at the time. Those expelled were left without food, water or travel documents. They bore marks of beatings and other torture. US troops at the border crossing told reporters that several bus loads of similarly tortured foreigners had been pushed across the border earlier in the month.<sup>167</sup>

In April and May, deportations were on a limited scale, but in June large-scale deportations started on a regular basis. In the late evening of June 8, the Kuwaiti authorities bused 46 people to the Iraqi border: 34 men, 9 women and 3 children. American Red Cross official Roy Sanders, who runs a displaced persons camp at Abdali, the Kuwaiti border town just south of Safwan, was quoted as saying, "This is obviously eye for an eye, tooth for tooth. It's clearly in violation of the Geneva Conventions, but what can we do? Our hands are tied."<sup>168</sup>

On June 11, four bus loads of Palestinians, Sudanese, Yemenis and Iraqis, including Kurds, were expelled into Iraqi territory, as observers from the U.N. and ICRC looked on. They were 85 men, 10 women and 20 children, all apparently from the Deportation Prison in al-Shuwaikh. According to *The Washington Post*, "Infants wailed and fathers sobbed as armed

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<sup>165</sup> His family maintains that in fact he never left Kuwait during the Iraqi occupation. MEW interview, June 4, 1991.

<sup>166</sup> Each visit was for no more than 15 minutes, compared to the hour and 15 minutes typically granted at the Juvenile Detention Facility.

<sup>167</sup> William Branigin and Nora Boustany, "Rights Officials: Kuwaiti Soldiers Commit Abuses: Arrests, Beatings, Deportations of Palestinians, Others Continue," *Washington Post*, March 17, 1991; Bob Drogin, "Kuwaiti Reprisal Killings Continue," *Los Angeles Times*, March 18, 1991.

<sup>168</sup> *Washington Post*, June 10, 1991.

Kuwaiti soldiers ordered them to sit in formation in the desert and rifled through their belongings." When a UN observer asked a Kuwaiti military officer the reason for deportation, the officer reportedly replied, "These people are guilty. They are Iraqis and Palestinians." At least some of those deported were expelled against their will. One was Salah Doury, a mechanical engineer married to a Kuwaiti, with three children. When *Washington Post* reporter John Arundel tried to interview some of the deportees, he was prevented from doing so and was briefly detained by the Kuwaiti authorities and stripped of his government-issued press card. Deportees, who were released in the U.N.-supervised demilitarized zone, were given no food, water, or sleeping mats. They were forced to walk about one mile in a dark, mine-infested area, without flashlights, to reach the Iraqi checkpoint. The deportees were not allowed to stay overnight in the Abdali camp.<sup>169</sup>

Other reports, including one by a prison official, confirmed that at least some of those deported were sent against their will. On June 9, the ICRC visited the Deportation Prison for the first time but was not allowed to interview any prisoners. Family members leaving the compound told a *New York Times* reporter that their relatives had been tortured by the state security police before being taken to the Deportation Prison<sup>170</sup> -- an account confirmed by other testimony gathered by Middle East Watch.

Four hundred more people were deported on June 23. According to Kuwaiti authorities, most of them were Iraqis,<sup>171</sup> but international observers told Middle East Watch that they were actually Bedoon.<sup>172</sup>

On July 6, forty-one people accused of collaboration with the Iraqi occupation authorities were expelled from Kuwait: 26 Iraqis, nine Sudanese, three Somalis, two Jordanians and one Palestinian. They were described as exhausted and bearing signs of torture.<sup>173</sup> On July 9, around 300 "Iraqis" were deported, including whole families. They were put on 12 buses and taken to Safwan.<sup>174</sup> Some 350 more "Iraqis" and others were deported on July 13.<sup>175</sup> Over 100 more were reported to have been expelled on July 20, according to a BBC report.<sup>176</sup> On

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<sup>169</sup> John Arundel, "Kuwait Expels Foreigners Across Border Into Iraq," *Washington Post*, June 12, 1991.

<sup>170</sup> John H. Cushman Jr., "Kuwait Accused of Illegal Expulsions," *New York Times*, June 11, 1991.

<sup>171</sup> *Sawt al-Kuwait* June 26, 1991.

<sup>172</sup> MEW interview, July 15, 1991.

<sup>173</sup> AFP July 7, 1991; *Le Monde*, "Koweit: Nouvelle vague d'expulsions," July 11, 1991.

<sup>174</sup> AP July 9, 1991; *al-Hayat* July 10, 1991. *Le Monde* "Koweit: Nouvelle vague d'expulsions," July 11, 1991, reported that the Kuwaiti government authorized the ICRC for the first time to meet with this group of deportees before they were expelled.

<sup>175</sup> Reuters, July 15, 1991.

<sup>176</sup> BBC World Service, July 21, 1991.

August 3, around 100 were expelled from Kuwait, according to an ICRC source in Kuwait, who expected that "expulsions will continue at this rate for a while until next month"<sup>177</sup>; however, Iraq said that 247 were expelled from Kuwait to Iraq on August 3: 40 Iraqis, 88 Jordanians, 119 Bedoons.<sup>178</sup>

*Le Monde* attributed to Western diplomats a report that about 2,000 people -- mostly Palestinians -- had been expelled from Kuwait since liberation for minor offenses.<sup>179</sup> According to another report from Western officials who monitor Kuwait's borders and airports, thousands of people have been deported or driven out of Kuwait because they were considered security risks.<sup>180</sup>

Once unrenewed residence permits expire at the end of October, as decreed by Kuwaiti authorities, Palestinian and Iraqi residents, as well as nationals of states considered sympathetic to Saddam Hussein, fear that they will be deported en masse. The Kuwaiti Ambassador to the United States is reported to have told a journalist that most Palestinians in Kuwait will be expelled within "a few months."<sup>181</sup>

The Kuwaiti government terminated the contracts of all of its Bedoon and foreign employees retroactively from August 2, 1990. Beside losing their jobs, this decision means that Palestinians -- as well as other foreigners and Bedoons -- will not be paid for the period since the Iraqi occupation, unlike Kuwaiti employees who are being paid for that period, whether they actually worked or not. Despite promises that they would be paid their severance pay -- generally one month's salary per year of employment -- most have yet to be paid.<sup>182</sup>

### Kuwaiti Law

Kuwaiti law gives wide discretionary powers to security officials to deport non-Kuwaiti nationals. Article 16 (as amended) of the Foreign Residents' Act (17/1968) stipulates:

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<sup>177</sup> Reuters, August 5, 1991.

<sup>178</sup> AFP, August 5, 1991.

<sup>179</sup> *Le Monde*, "Koweit: Des milliers de Palestiniens ont été chassés de l'emirat," June 25, 1991.

<sup>180</sup> Reuters, June 25, 1991.

<sup>181</sup> Jonathan Border, "Kuwait will expel most Palestinians, ambassador says," *San Francisco Examiner*, June 17, 1991.

<sup>182</sup> Foreign employees under class-A contracts are entitled to .96 of a month salary for each of the first 5 years of employment and 1.44 of a month salary for every year thereafter. Class-B contracts entitle a foreign employee to half of a month salary for each of the first 5 years and a whole month salary for every year thereafter. Per-diem employees and those hired under Class-C contracts are not entitled to severance pay under Kuwaiti Civil Service Regulations No. 6 of 1979 and No. 2 of 1982.

"The Minister of Interior is authorized to issue a written order to expel any foreigner, even if still holding a valid permit to reside in the country, in the following cases:

1. If the foreign resident is sentenced and the court orders his deportation.
2. If he has no visible means of financial support.
3. If the Minister of Interior believes that the deportation is mandated by public interest, public security or public morals."

The Minister of Interior can also order that all costs of deportation be borne by the deportee (Art. 21). Article 22 gives the would-be deportee, upon posting an acceptable bond, the right to a period of time to take care of his unfinished affairs. That period is determined by the Minister of Interior, but cannot exceed three months. In the years 1980-90, before the Iraqi invasion of Kuwait, the Kuwaiti government frequently invoked the public-interest clause of the law to deport summarily thousands of its residents, including Bedoons.

Three recent government decisions have made expulsion even easier. First, the government has ruled that foreigners who left the country and came back during the Iraqi occupation are now illegal residents since their last permission to enter the country was granted by the Iraqis. Residents are thus considered illegal even if their original, Kuwaiti-issued residence permits have not expired. Kuwaiti officials explained their decision by pointing out that these people could have obtained permits to re-enter the country from Kuwaiti embassies abroad, and thus arguing that the failure to do so was an implicit recognition of the legitimacy of Iraqi rule over Kuwait -- despite the Kuwaiti government-in-exile's lack of control over Kuwaiti borders at the time.

Second, the Minister of Interior has decided that foreigners can be deported without the need to obtain a court order if they have committed serious traffic offenses. The decision appears to be aimed at granting Ministry of Interior officials a freer hand to deport residents without having to show that the deportation is mandated by the needs of public security or the public interest.

Third, the Kuwaiti government has decided to terminate the contracts of all its foreign-national employees, as well as Bedoons, retroactively from August 2, 1990. This means that those who are not rehired are now deportable because they either have no "visible means of support," or because foreign-national employees, once their jobs are terminated, are required to leave the country within a period to be determined by the Minister of Interior but not exceeding three months (Art. 15 of Law 17/1968).

The Kuwaiti government has initiated a process called Foreign Residents Re-registration, the stated objective of which is to "regulate and streamline all resident permits, and discover those with expired or forged permits, and those who came during the Iraqi occupation."<sup>183</sup> The Kuwaiti government announced that by the end of October, all residence permits in the country will have to be re-issued. Any permits not renewed by that time will be invalid,

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<sup>183</sup> *Sawt al-Kuwait*, May 15, 1991.

regardless of how much time is remaining on the permits, which are normally granted for a period of up to five years. Those without newly issued permits can be automatically deported after November 1. New permits have been issued only to those whose contracts have been renewed.

### International Standards

The manner in which many of the expulsions have been carried out, as well as in some cases the deportations themselves, are in conflict with Kuwait's legal duties under international law and with other international standards. Protected persons under Article 4 of the Fourth Geneva Convention, which Kuwait has ratified, are defined as "those who...find themselves, in the case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals." Excluded from this definition are nationals of states not bound by the Fourth Geneva Convention, nationals of neutral and co-belligerent states with whom normal diplomatic relations are maintained, and persons protected by the three other Geneva Conventions of 1949. According to the official ICRC *Commentary*, "owing to its negative form the definition covers persons without any nationality."<sup>184</sup> This view was made explicit by Article 73 of the First Additional Protocol to the Geneva Conventions, which Kuwait has also ratified.

Accordingly, persons protected by the Fourth Geneva Convention and Protocol I would include Iraqi, Palestinian and Bedoon residents of Kuwait. Most Bedoons and Gazan Palestinians, by virtue of their stateless status, and Iraqis, by virtue of their status as nationals of the principal Kuwaiti opponent in the armed conflict, are clearly protected persons when in the hands of the Kuwaiti government.<sup>185</sup> Other Palestinians, whether citizens of Jordan or deemed to be under the protection of the Palestinian Liberation Organization (PLO), are also protected persons. Even if, despite their tilt toward Iraq, Jordan or the PLO were deemed to be neutral, they have not maintained normal diplomatic relations with Kuwait.<sup>186</sup> The ICRC

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<sup>184</sup> Jean Pictet (ed.), *Commentary: IV Geneva Convention*, (Geneva, ICRC, 1958), 47.

<sup>185</sup> A senior Egyptian official told Middle East Watch on July 22, 1991 that there are about 23,000 Gazan Palestinians in Kuwait with Egyptian travel documents. Sources in the Gazan community in Kuwait estimate the number to be between 20,000 and 30,000. Egyptian travel documents (*laissez passers*) do not grant their holders Egyptian citizenship and do not in themselves entitle them to residence in Gaza now that Israel is the occupying power. Israel has refused to permit many of these Gazans to return to Gaza.

<sup>186</sup> The Jordanian Foreign Minister told the newspaper *al-Dustur* (June 13, 1991) that his government "is ready to open the embassy; however, it has not received Kuwait's approval to do so." FBIS June 13, 1991. As for the PLO which also provided diplomatic protection to Palestinians before August 2, 1990, and whose office was accredited as an embassy in 1988, the Kuwaiti government has refused to re-accredit it since liberation. The Kuwaiti Ministry of Foreign Affairs, in a statement distributed by KUNA and published in *Sawt al-Kuwait* (July 30, 1991), reiterated that "at the present time, there are no Palestinian diplomats accredited with the Ministry."

has explicitly upheld the view that Palestinians in post-liberation Kuwait are protected persons.<sup>187</sup>

Although Article 5 of the Fourth Geneva Convention excepts from protection an individual who is "definitely suspected of or engaged in activities hostile to the security of the state," it cautions that "such person shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial." It also calls on the state to grant such person "the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the state."

Although the Fourth Geneva Convention and Protocol I cease to apply on the general close of military operations and the termination of any state of occupation, they continue to apply "for those persons whose final release, repatriation or re-establishment takes place thereafter."<sup>188</sup> Because, due to Kuwaiti government actions, many non-Kuwaiti residents of Kuwait have yet to re-establish their former lives, they remain protected persons under the Fourth Geneva Convention and the First Protocol. Moreover, any repatriations would clearly be governed by the Convention.

According to Article 36 of the Convention, any repatriation must be carried out "in satisfactory conditions as regards safety, hygiene, sanitation and food." The dumping of deportees in the middle of a mine-infested desert, with no provisions for survival, hardly comports with this legal requirement. Furthermore, persons subject to deportation must be accorded an opportunity to present a defense against the order, and if the order is upheld, they must be given a reasonable time before the order is carried out to arrange their affairs, and the International Committee of the Red Cross must be notified.<sup>189</sup> As described above, these requirements have been virtually ignored by Kuwaiti authorities.

For protected persons whom Kuwait does not allow to settle in its territory but who cannot for any reason be repatriated, a third country must be found where they will be received and allowed to settle.<sup>190</sup> Iraqis who have taken refuge in Kuwait and fear persecution if they are returned to Iraq cannot be treated on the sole basis of their nationality *de jure* (Fourth

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<sup>187</sup> Remarks of François Bugnion of the ICRC legal department, published in the ICRC Bulletin, May 1991.

<sup>188</sup> Protocol I, Art. 3(b).

<sup>189</sup> *Commentary*, IV, 266. Similar provisions are contained in the International Covenant on Civil and Political Rights, which though not formally adhered to by Kuwait, has been ratified by some 90 nations and is the leading source of human rights standards should the protection of the Geneva Conventions and Protocol I be deemed to have lapsed for certain residents of Kuwait. Article 13 of the Covenant prescribes: "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

<sup>190</sup> *Commentary*, IV, 64.

Geneva Convention, Art. 44); they are "refugees who do not, in fact, enjoy the protection of any government," and must be allowed to stay in Kuwait unless they can be re-settled somewhere other than Iraq. Indeed, quite apart from the Geneva Conventions, repatriation of these Iraqis is prohibited under the customary-law refugee doctrine of *non-refoulement*, which is codified in Article 33 of the Convention Relating to the Status of Refugees.<sup>191</sup> However, Kuwait is making no apparent effort to ensure that the long-term residents of Kuwait who are sent to Iraq will not face persecution.

Until a third country is found, refugees are entitled to the protection of the Fourth Geneva Convention, including ensuring the provision by Kuwait of the means of subsistence, through paid employment or state allowances.<sup>192</sup> According to Article 39 of the Fourth Geneva Convention,

"Protected persons who, as a result of the war, have lost their gainful employment shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the power in whose territory they are.

"Where a party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said party shall ensure his support and that of his dependents."

Kuwait has wholly ignored these legal requirements.

### Expulsion of the Bedoons<sup>193</sup>

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<sup>191</sup> Although Kuwait has not ratified the Refugee Convention, its *non-refoulement* provision is binding on Kuwait as a matter of customary international law. Article 33 prohibits expelling or returning "a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Exception is made when there are "reasonable grounds for regarding [a refugee] as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country." Given the arbitrariness of the deportation process in Kuwait and the complete lack of due process, as detailed below, Kuwait cannot claim "reasonable grounds" for believing the deportees present individual security risks.

<sup>192</sup> *Commentary IV*, 249.

<sup>193</sup> The word "bedoon" is from the Arabic phrase "bedoon jinsiyya," literally meaning either "without nationality" or "without citizenship." The phrase was originally the official designation for anyone whose qualification for Kuwaiti citizenship was in doubt. The phrase was later officially



The Bedoons are a heterogenous group which includes a substantial number of people -- perhaps the majority of all Bedoons -- who were born and have lived in Kuwait all their lives but are not deemed by officials to qualify for Kuwaiti citizenship, whether of the first or second class. Sometimes they lack citizenship because a male ancestor neglected to apply for it when citizenship regulations were first enacted in 1959, in anticipation of independence in 1961.<sup>194</sup> Children of a Kuwaiti mother and a foreign father, who did not acquire their father's nationality, are also considered Bedoon.<sup>195</sup> So are members of tribes whose territory once extended between Kuwait and its neighbors, and whose allegiance was traditionally to the tribe, although most of these have long been settled in urban areas in Kuwait. But the Bedoons are also said to include some nationals of other states who have hidden their nationality to facilitate staying in Kuwait. Because of the alleged existence of this last category, Kuwaiti officials insist, contrary to the facts, that all Bedoons are foreigners and can be expelled whenever the Kuwaiti government chooses to do so.

According to unofficial figures obtained by Middle East Watch from the Kuwaiti Ministry of Planning, there were more than 250,000 Bedoons at the time of the Iraqi invasion. Although many individual Bedoons are professionals and successful businessmen, the Bedoons as a group have poor living conditions since they do not enjoy the benefits of the welfare system to which citizens, and to some extent foreign residents, are entitled. Because of government-imposed restrictions on employment, many Bedoons were able to work only for the security forces. They live in squalid slums under close surveillance.<sup>196</sup>

Most of the Bedoons say that they would qualify for citizenship if they were given an opportunity to prove their entitlement under the law. They believe they can qualify for citizenship under either Article 1 or Article 4 of the Nationality Law (70/1966). Under Article 1, "Kuwaitis are those who settled in Kuwait before 1920 and maintained their normal residence

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replaced with terms such as "Non-Kuwaiti" or "Undetermined Nationality," but Bedoon is still the most common designation. The term is not to be confused with Bedouin, from the Arabic word "badawi" (nomad) or "badu" (nomads). Although many of the Bedoons are of Bedouin origin, most of them have long settled in the urban centers of Kuwait, and many have never lived a nomadic life.

<sup>194</sup> See Nationality Law 15/1959, creating a period to register for citizenship in 1960.

<sup>195</sup> Kuwaiti Nationality Law (70/1966) does not give Kuwaiti citizenship to children of a Kuwaiti mother and a foreign father unless the father dies or the marriage is dissolved. Children of a Kuwaiti mother and a Bedoon father are also considered Bedoon.

<sup>196</sup> For several years before the Iraqi invasion, Bedoon neighborhoods endured frequent security sweeps that included house searches, detention of large numbers of suspects and summary deportations. After the liberation of Kuwait on February 26, 1991, their neighborhoods, such as al-Sha'biyyat in al-Jahra and al-Selaibiyya in the west of Kuwait City, came under closer surveillance, as a Middle East Watch representative witnessed in March 1991. For example, armed men in plainclothes and in uniform prevented inhabitants of al-Sha'biyyat from being interviewed. Some who were interviewed by MEW or by a Kuwaiti group organizing relief work in the area were later interrogated by the Kuwaiti secret police. Another neighborhood, al-Selaibiyya, was off limits to journalists during much of March.

in Kuwait until the publication of this Law." Article 4 (as amended) sets several conditions for naturalized (second class) citizenship, the most important of which is the maintenance of a residence in Kuwait since 1949 for those from an Arab League country and since 1944 for all others.

During a hearing before the Kuwaiti National Assembly on July 1, 1986, Shaikh Salem Sabah al-Salem al-Sabah, Minister of Interior, said that the Ministry had the applications of 25,522 Bedoons who said that they were entitled to citizenship of the first class and 37,689 who said they qualified for citizenship of the second class. These figures did not include dependents of the applicants. The Minister further told the Assembly that he believed that "90% of them are lying."<sup>197</sup> When Law 100 of 1980 opened the registration for citizenship for one year, 72,259 registered for citizenship between December 21, 1980 and December 21, 1981, according to Ministry of Interior's figures, but only a few were granted citizenship.<sup>198</sup>

Since Kuwaiti citizenship was granted only following brief periods of registration, residents did not have an adequate opportunity to prove their claim to citizenship, especially in the cases of minors and illiterate residents who were not able to take advantage of the registration process. The committees that heard claims of citizenship were secret internal bodies of the Ministry of Interior whose decisions were final.<sup>199</sup>

The Bedoons believe that denying them citizenship is a form of discrimination and a violation of Article 15 of the Universal Declaration of Human Rights, which provides that no person should be "arbitrarily deprived of his nationality."<sup>200</sup> Similarly, the International Covenant of Civil and Political Rights, which Kuwait has not ratified but which is the leading source of human rights standards, having been ratified by some 90 nations, provides in Article 12(4) that "[n]o one shall be arbitrarily deprived of the right to enter his own country" -- a provision with particular applicability to the displaced Bedoons described below.

In the case of the stateless Bedoons who were born and have lived most of their lives in Kuwait, international standards impose special obligations on Kuwait to recognize their citizenship. Most nations in the Middle East, including Kuwait, determine citizenship not

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<sup>197</sup> Abdel Karim Abu Khadhra, "The National Assembly Approves Nationality Law Amendment," *al-Watan* (Kuwait), July 2, 1986, in Arabic. The newspaper published (pp. 4-8) the full text of the proceedings of the National Assembly on July 1, 1986. On July 2, 1986 the Assembly was dissolved by royal decree.

<sup>198</sup> *Al-Watan* (Kuwait), May 19, 1984. There were two periods for registration for citizenship in Kuwait: in 1960, after Nationality Law 15/1959 was passed, and in 1981, after Law 100/1980 reopened registration for one year. During a hearing in the National Assembly on July 1, 1986, it was revealed that only a small fraction of those registered in 1981 were granted citizenship.

<sup>199</sup> Article 21, Nationality Law 70/1966; Article 3, Law 100 of 1980.

<sup>200</sup> According to Restatement of the Foreign Relations Law of the United States (§ 211, Comment e), there is a growing recognition of a human right to nationality.

according to one's place of birth but according to the nationality of one's father.<sup>201</sup> Thus, under Kuwaiti law, those born in Kuwait to a father of another nationality are considered to be members of that nationality. Because most Bedoons are born to fathers who themselves were stateless Bedoons, they have been relegated to a permanent stateless limbo. They have no colorable claim to citizenship anywhere other than Kuwait, but Kuwait refuses to grant them citizenship.

To avoid such citizenship vacuums, international standards have been developed imposing an obligation on states to grant citizenship to stateless people who are not recognized as citizens of any other state.<sup>202</sup> The International Covenant of Civil and Political Rights addresses this issue by providing in Article 24(3) that "[e]very child has the right to acquire nationality." Similarly, Article 1 of the Convention on the Reduction of Statelessness provides that "[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless." Although neither convention has been ratified by Kuwait, they present a broad international acceptance of standards suggesting that Kuwait should grant citizenship (and certainly residency rights) to these stateless Bedoons.

The Kuwaiti courts in the past rejected the Kuwaiti government's attempts to treat Bedoons as foreigners in the application of the Foreign Residents Act of 1968, and recognized the special status to which the Bedoons were entitled. In an important decision in June 1988, the Kuwaiti Appeals Court stated:

"There is no doubt that the foreigner who is subject to deportation according to Article 79 of the Penal Code and the Foreign Residents' Act is the foreigner who belongs to a state other than the State of Kuwait and carries the citizenship of that state. Non-Kuwaiti residents of Kuwait who do not belong to another state and do not hold its citizenship but who are deprived of Kuwaiti citizenship for one reason or another -- but enjoying nevertheless the same privileges as Kuwaiti citizens, except for those privileges that derive directly from citizenship -- are treated in a special way that is distinct from the treatment of foreigners. They cannot be legitimately considered foreigners in applying Article 79 of the Penal Code or the Foreign Residents Act."

### **Barring the Return of Bedoons**

There are around 3,000 Bedoons registered with the ICRC who are stranded in Iraq and whom Kuwait has so far, with few exceptions, refuse to allow to repatriate to Kuwait. A number of them were detained by Iraqi occupying forces, taken to Iraq during the occupation and then released after the war.

Another group of Bedoons who are refused admission into Kuwait are those stranded

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<sup>201</sup> As in, for example, Articles 2 and 3 of the Kuwaiti Nationality Law 70 of 1966.

<sup>202</sup> Although we mention this obligation in the context of the Bedoons, a similar point can be made regarding Gazan Palestinians.

at a displaced persons camp in the middle of the desert at al-Abdali border post. The population at the camp has fluctuated, reaching close to 5,000 in late May, including families with small infants, but declining since then as the majority of its residents decided to wait in more hospitable surroundings in Iraq as the Kuwaiti government decides whether to allow them in.

Some of the Bedoons stranded in Iraq and at Abdali had been interned by the Iraqi government. In such cases, Kuwait's refusal to permit their repatriation is in violation of its legal duty under Article 134 of the Fourth Geneva Convention, which requires all signatories, "upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence."

### **Barring the Return of Palestinians**

During the Iraqi occupation of Kuwait, around 180,000 Palestinians -- more than half the pre-war Palestinian population of 350,000 -- left Kuwait to avoid the hardships of occupation and war. In many cases, they left behind their homes and property accumulated over decades of residence in Kuwait. Some had no country in which they were entitled to reside. After liberation, with very few exceptions, Kuwait has refused to allow any of them to return. The Kuwaiti government has failed to appoint guardians to protect absentee property and, on July 17, the Kuwaiti cabinet approved regulations allowing Kuwaiti landlords to remove furniture and other items from rented premises previously occupied by foreigners<sup>203</sup> who are not being allowed to return.

### **United States Policy**

The need to put an end to human rights violations committed by Iraq in Kuwait was one of the stated reasons that the U.S. Administration went to war against Iraq. On numerous occasions, President Bush condemned Iraqi atrocities in rallying support to wage war against Saddam. In his January 16 speech announcing the launching of Desert Storm, he stated that he could not wait any longer because Saddam Hussein had "subjected the people of Kuwait to unspeakable atrocities, and among those maimed and murdered, innocent children." In the same speech the President also said, "The terrible crimes and tortures committed by Saddam's henchmen against the innocent people of Kuwait are an affront to mankind and a challenge to the freedom of all." In his February 27 speech declaring that "Kuwait is liberated," President Bush said, "This is a victory for the United Nations, for all mankind, for the rule of law, and for what is right."

Since the liberation of Kuwait, however, U.S. senior officials have shied away from publicly criticizing the serious human rights violations committed by Kuwaiti authorities against foreign and Bedoon residents. This reticence comes despite the enormous respect that most Kuwaitis have for the United States as the leading member of the alliance responsible for liberating their country. Moreover, many Kuwaitis believe that they require an ongoing U.S.

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<sup>203</sup> *Sawt al-Kuwait*, July 18, 1991.

military presence to ward off a perceived continuing Iraqi threat.<sup>204</sup>

During a June 12 hearing, Sen. Ernest F. Hollings (D-S.C.) commented to Secretary of State James Baker: "Down in Kuwait...the torture and rape of Saddam continues under the Emir," noting that the proclaimed new international order "looks like...a new world disorder." Secretary Baker responded by emphasizing that the war was fought only to combat Iraqi aggression, suggesting that it was not waged to establish respect for human rights in Kuwait: "What we did...was to mobilize the international community to make it clear that unprovoked aggression by a big country against a little one isn't going to stand up. And we did it....We destroyed Iraq's military capabilities -- Iraq, which constituted the greatest threat to the security of the Persian Gulf, and indeed the greatest threat to Israel's security -- gone; military threat is destroyed."<sup>205</sup> Kuwait "may not be the optimum type of regime," the secretary explained. Although "[i]t does not follow our standards, and it is not a full-fledged democracy," he praised it for its announcement that elections would be held, and its as yet unacted-upon willingness to enfranchise women.<sup>206</sup> Most Kuwaitis, however, believe that the October 1992 date that Kuwaiti government has set for elections -- after months of evasion -- is too distant considering the important decisions that Kuwait must make in the reconstruction period. The delay also violates an understanding between the government and the opposition reached during the Iraqi occupation to hold early elections.

On granting women the right to vote, the Kuwaiti government has been even less forthcoming. The only public announcement made by Kuwaiti officials on this issue has been the Emir's address to the nation on April 8, 1991, when he said that "the subject of participation of women in parliamentary life will be studied to ensure that women carry out their full role in the building of society and its progress."<sup>207</sup> Later statements by Kuwaiti officials, such as the July 9 addresses by the Emir and the Crown Prince to the first session of the National Council, seemed to further downplay the issue.<sup>208</sup> In an August 13, 1991 National Council

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<sup>204</sup> Chris Hedges, "A Year Later, Kuwait Sinks Into Malaise," *New York Times*, August 2, 1991; Comments by Shaikh Sa'ad Abdalla al-Sabah, *Sawt al-Kuwait*, July 3, 1991.

<sup>205</sup> Hearing of the Commerce, Justice and State Subcommittee of the Senate Appropriations Committee, June 12, 1991.

<sup>206</sup> David Hoffman, "Kuwaitis Defended By Baker," *Washington Post*, June 13, 1991. In mid-April Secretary Baker described the Emir of Kuwait and the Crown Prince as "very forthcoming," after they told him privately, "[T]here will be elections in 1992 and considerations are being given as well to voting rights for women." John M. Goshko, "Baker Presses Kuwait's Leadership," *Washington Post*, April 23, 1991.

<sup>207</sup> From the April 8, 1991 address (KUNA April 10, 1991. MEW's translation).

<sup>208</sup> While avoiding mentioning the women's vote, the Emir said in his address to the National Council on July 9, 1991, "We recall the supreme and bright role that women undertook...behind the resistance fighters, as wives and sisters, and even as resistance fighters themselves. They gave examples of heroism that history will admiringly record, and Kuwait will proudly remember. The challenge propelled them in the face of the most difficult circumstances to provide for their homes and for Kuwait as a whole in spite of the siege of the [Iraqi] aggressors." The Crown Prince and Prime

meeting attended by the Crown Prince, a motion to discuss granting women the right to vote was defeated in favor of another motion to postpone the discussion indefinitely.<sup>209</sup>

On May 20, 1991, one day after the beginning of martial-law trials in Kuwait, most of the State Department briefing was spent defending the summary proceedings. Despite universally expressed outrage at the travesty of the previous day's trials, spokesperson Margaret Tutwiler, after having been briefed by U.S. Ambassador to Kuwait Edward Gnehm, dwelled on the few positive aspects of the trials: They had been open, counsel had been present (although largely prevented from playing any meaningful role) and international observers have been in attendance. She did not see fit to note the other grave deficiencies in the trials, even after they were raised by reporters: the lack of right to appeal, to consult a lawyer, to examine evidence prior to trial, to cross-examine prosecution witnesses, and to call defense witnesses. None of these concerns had been raised with the Kuwaiti government, she indicated. Moreover, she was unaware that many of the defendants had been tortured, despite extensive documentation of such torture by human rights organizations and by U.S. embassy staff in Kuwait. The only criticism she voiced was that "15 years for wearing a T-shirt is a little steep."<sup>210</sup>

When Kuwait's Crown Prince decided to commute the death sentences, the State Department praised the move as "evidence that death sentences are given careful review."<sup>211</sup> This comment came despite the fact that the Crown Prince, at the same time as he commuted the death sentences, changed them to life imprisonment and ratified unchanged more than a hundred other harsh sentences passed following proceedings lacking the minimum acceptable standards of fair trials.

After Kuwait expelled 115 of its residents during the night of June 11, State Department Spokesperson Richard Boucher refused to comment, despite repeated questions from the press.<sup>212</sup> Anonymous State Department officials let it be known that they did not believe the

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Minister, who also avoided addressing women's right to vote, said in his speech before the same session, "The effective patriotic role of the Kuwaiti woman, whose great steadfastness as a mother, a sister, a wife, or as a daughter resisting the occupation inside Kuwait and fighting against it outside, made us proud and grateful. This role undoubtedly entitles her to an even greater role and fuller degree of contribution in the Kuwait of the future." Both addresses were published in *Sawt al-Kuwait*, July 10, 1991 and have been translated by MEW.

<sup>209</sup> MEW interview, August 15, 1991.

<sup>210</sup> State Department briefing, May 20, 1991.

<sup>211</sup> From a briefing by Margaret Tutwiler, State Department spokesperson, June 27, 1991. By contrast, Abdalla al-Nibari, a Kuwaiti opposition leader, attributed the commutation to pressure from Kuwait's Western allies, and added, "It is a political decision. It gives the impression of being made under international pressure, especially from the British government." He added that it was the wrong decision; the trials were defective and therefore defendants should be granted new trials. *Mideast Mirror*, June 27, 1991.

<sup>212</sup> State Department briefing June 21, 1991.

expulsions violated the Geneva Conventions,<sup>213</sup> even though, as noted above, the deportees, including 20 children, were dumped by Kuwaiti military officers on the border with no food or water and forced to walk a mile in darkness, through a mine-infested area, toward a nation (Iraq) where many justifiably feared persecution<sup>214</sup>-- all in violation of specific provisions of the Geneva Conventions.<sup>215</sup>

The Kuwaiti Ambassador told a reporter that President Bush had told him during a visit to the White House, "We didn't fight this war for democracy or those trials. Don't be intimidated by what's going on."<sup>216</sup> The White House did not contradict this statement and the President himself said later at a July 1 press conference in response to a question about "atrocities" in Kuwait since the end of the war: "The war wasn't fought about democracy in Kuwait. The war was fought about aggression against Kuwait." He said that he understood the rage Kuwaitis feel, recalled what had happened in France after the Second World War when "the people that were liberated did not take kindly to those that had sold out to the Nazis," and then added, "I think we're expecting a little much if we're asking the people in Kuwait to take kindly to those that had spied on their countrymen that were left there, that had brutalized families there and things of that nature."<sup>217</sup> It is difficult to imagine a more forceful apology for abuse.<sup>218</sup>

Criticisms of the human rights situation in Kuwait have not been wholly lacking in official U.S. statements. U.S. Ambassador to Kuwait Edward Gnehm has expressed public concern, most notably in a June 6 speech to the Kuwaiti Chamber of Commerce, in which he said, "[T]hose who broke Kuwaiti laws and were parties to Iraqi criminal actions should be prosecuted fairly and fully under the law. But the innocent should not become new victims."<sup>219</sup> However, such occasional criticisms have been substantially overshadowed by the signals being sent by more senior administration officials, including President Bush and Secretary of State Baker, that ending human rights abuses in Kuwait is not a primary U.S. concern.

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<sup>213</sup> David Hoffman, "Kuwaitis Defended By Baker," *Washington Post*, June 13, 1991.

<sup>214</sup> A woman deportee cried, "Please don't leave us here! Saddam people will surely kill us." *Washington Post*, June 12, 1991.

<sup>215</sup> See above under Summary Expulsions.

<sup>216</sup> Jonathan Broder, "Kuwait will expel most Palestinians, ambassador says," *The Orange County Register*, June 17, 1991.

<sup>217</sup> The text as released by the Office of the Press Secretary at the White House (Kennebunkport, Maine), July 1, 1991.

<sup>218</sup> The Kuwaiti government daily, *Sawt al-Kuwait*, featured the President's comments on its front page under the headline, "Bush declares his understanding of Kuwaitis' attitude towards collaborators: 'We would be asking a lot if we asked them to show mercy,' he says." July 3, 1991.

<sup>219</sup> Reuters, June 8, 1991.

## Deployment of U.S. Forces After Liberation

One important factor in the explosion of abuse immediately following the liberation of Kuwait was the allies' failure to assign troops in appreciable numbers to patrol Kuwait City and deter abuses, despite the presence of thousands of troops in the vicinity. Although violent abuses were rampant and, in the initial days following liberation, the Kuwaiti government showed no sign of an ability or intention to stop the violence, the allies made little effort to deploy troops in sufficient numbers -- with the authority to intervene to stop abuse -- in potential trouble spots in Kuwait City, such as near detention facilities or in neighborhoods that had been targeted by returning Kuwaitis seeking revenge.<sup>220</sup> Instead, rigidly applying notions of sovereignty that bore little relation to the Kuwaiti reality at the time, the allies washed their hands of the problem, ignoring their central role days earlier in returning the Kuwaiti government to power. The allies' passivity, despite the obligation of all parties to the 1949 Geneva Conventions "to ensure respect for the...Convention in all circumstances,"<sup>221</sup> stood in sharp contrast to their ongoing active role in providing security against possible renewed aggression from Iraq and in helping to rebuild Kuwait's infrastructure.<sup>222</sup>

The potentially beneficial role that allied forces might have played in curbing abuse was revealed by several witnesses interviewed by Middle East Watch, who described U.S. troops who happened to have been present stopping Kuwaiti forces from abusing detainees. On other occasions, however, U.S. forces were less effective in combatting abuse, either because of their small numbers or because of their limited authority and mandate. In one case reported to Middle East Watch, U.S. troops witnessing the beating of prisoners did nothing. In another case reported by the London *Independent*, U.S. troops seemed to condone the beating of a Palestinian

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<sup>220</sup> From MEW's observations in Kuwait between March 9 and March 31. For the period immediately following the liberation of Kuwait, see Donatella Lorch, "With Iraqis gone, Kuwaitis turn wrath on Palestinians," *New York Times*, March 4, 1991 and Donatella Lorch, "Palestinians In Kuwait Reported Shot and Beaten," *New York Times*, March 6, 1991.

<sup>221</sup> Common Article 1.

<sup>222</sup> An operation undertaken by the U.S. Army in Kuwait was described as the largest civil affairs operation since the Second World War. It included the Kuwaiti Task Force, composed of 57 Army civil-affairs reservists who started planning reconstruction operations with the Kuwaiti government in December 1990. They include lawyers, doctors, engineers, a judge, and other specialties, such as Colonel Randall Elliot who in civilian life is a State Department Middle Eastern specialist. Later, Maj. Gen. Patrick J. Kelly of the Army's Corps of Engineers, head of Defense Restoration Assistance Office in Kuwait, undertook the responsibility of supervising the Kuwait Emergency Reconstruction Office, a major reconstruction operation undertaken by the Corps of Engineers (John Kifner, "U.S. Army Doing the Work in Kuwait," *New York Times*, April 5, 1991.) The Corps of Engineers will remain in Kuwait for some time, according to Colonel Curvee, its Public Information Director in Kuwait in an interview with *Sawt al-Kuwait*, August 15, 1991. U.S. military officers also advised Kuwaiti legal authorities in preparation of martial-law trials (Lee Hockstader, "Justice Goes on Trial in Kuwait," *Washington Post*, April 3, 1991.)



youth and to be bothered only by the presence of reporters.<sup>223</sup>

The mandate of troops that were deployed was apparently insufficient to stop human rights abuses. Upon liberation of Kuwait, the U.S. Army deployed 3,500 troops known as Task Force Freedom. They included Special Forces who helped Kuwaiti security forces take over police stations and man roadblocks.<sup>224</sup> Special Forces were clearly visible in Kuwait throughout the first month after liberation but their mandate appeared to be a limited one. U.S. Lt. Col. Ron Smith told the London *Guardian* after he visited a number of detention centers where prisoners were reportedly being mistreated, "All I can do is ask the questions and hope that it has an effect."<sup>225</sup> In another report by the London *Independent*, it quoted a U.S. military source as saying:

"Our people on the ground didn't understand what their role was. Some of our senior officers were not reporting things up the channel. We would find that our Special Forces officers based in Kuwaiti police stations would know people were being tortured there but couldn't prove it. We would have American officers who would hear someone screaming but who couldn't say the man was being tortured because he wasn't witnessing it. So they would not report to us."<sup>226</sup>

The bulk of U.S. troops were withdrawn from Kuwait by the end of May. According to Edward Gnehm, the US Ambassador to Kuwait,<sup>227</sup> there were 3,700 U.S. troops in Kuwait at the time, in addition to troops from other countries. He said that their role was to deter the external threat from Iraq, not to assist with internal security. In addition, the 11th Armored Cavalry arrived from Germany in mid-June, but they were assigned to stay in Doha and al-Jahra, outside Kuwait City. Another significant step in the special U.S.-Kuwaiti relationship seems to be under way. In early August, a Kuwaiti government newspaper reported that a military treaty between the two countries was near completion.<sup>228</sup>

Such deep and continuing military involvement in the country gives the United States substantial leverage to encourage respect for human rights. It also imposes on the United States a duty -- so far largely unfulfilled -- not to turn its back on violent abuse committed by the

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<sup>223</sup> Robert Fisk, "Kuwait Palestinians face gunmen's revenge," the *Independent* (London), March 4, 1991.

<sup>224</sup> John Kifner, "U.S. Army Doing the Work in Kuwait," *New York Times*, April 5, 1991.

<sup>225</sup> Kathy Evans, "Watchdogs on trail of Kuwait abuses," *Guardian* (London), April 14, 1991.

<sup>226</sup> Robert Fisk, "US evidence links emirate's ruling family with death squads murdering Palestinians," the *Independent*, (London), April 27, 1991.

<sup>227</sup> In an interview with CNN News, May 27, 1991.

<sup>228</sup> *Sawt al-Kuwait*, August 5, 1991, attributed to U.S. military sources the statement that "a military agreement will be signed very soon -- perhaps within days. It is part of security arrangements with the GCC countries, ranging from holding joint training exercises to storing U.S. matériel in the area and allowing U.S. forces to use local air bases."

government it is defending.

## **Recommendations**

### **I. On Extrajudicial Killing, Torture, Disappearance and Arbitrary Detention:**

Middle East Watch urges the Kuwaiti government to:

- o Immediately put an end to extrajudicial killings, torture and ill-treatment of prisoners.
- o Investigate all cases of killing and disappearance since liberation, providing a full accounting of all those killed in custody, disappeared, or buried without identification in mass graves.
- o Allow the conduct of an independent forensic analysis of the bodies buried in mass graves.
- o Bring to justice those responsible for all killings, disappearance and torture since liberation.
- o Provide full accounting to families and international humanitarian organizations of all those detained in Kuwait since liberation.
- o Allow access by the ICRC, families and lawyers to all detention centers, including the State Security Prison, the National Guard Detention Facility, the Military Intelligence detention facility and the Deportation Prison.
- o Take immediate steps to improve conditions in detention centers by reducing overcrowding, ensure adequate supplies of water and food and providing adequate medical care and protection from the elements.
- o Release all those who have not been formally charged or against whom there is no evidence of wrongdoing. For those who have been formally charged, ensure that they receive a fair and public trial promptly.
- o Stop arbitrary arrest and detention, including by requiring advance issuance of a warrant for all arrests other than of suspects caught in the act of committing a crime.
- o Bring all detainees promptly before an independent judicial officer.
- o Notify families as soon as possible of the whereabouts of detainees at all times.
- o Advise suspects of their rights at the time of the arrest, including the right to have an attorney present during interrogation.

## II. On Trials of Suspected Collaborators:

Middle East Watch calls on the Kuwaiti government to:

- o Recognize the serious due-process violations that infected the trials before the martial-law courts by voiding all convictions entered by such courts. Defendants should be released or, if the evidence warrants, tried before a regularly constituted tribunal.
- o Provide those to be tried before all courts, including state-security courts, with the necessary guarantees for the exercise of the right of defense, including by
  - o appointing of defense lawyers, not only before trials start but also before interrogation begins for those who exercise their right to have an attorney present but cannot afford to hire an attorney.
  - o permitting lawyers from other countries to represent suspects who choose to retain such lawyers.
  - o discontinuing the use as evidence of confessions extracted through coercion.
  - o allowing defense lawyers to confront and cross-examine prosecution witnesses.
  - o allowing those on trial to present evidence and witnesses in their own defense.
- o Ensure that all future trials are public and open to international observers.
- o Ensure that all future trials, including trials before state-security courts, are subject to appeal to an independent court, before which defendants and their lawyers are allowed to present arguments in their defense.

## III. On Deportations:

Middle East Watch calls on the Kuwaiti government to:

- o Stop deporting Bedoons and stateless Palestinians.
- o Stop deporting refugees without making arrangements for them to be accepted by a third country where they will not face persecution, and in particular, stop deporting Iraqi refugees to Iraq.
- o To ensure that when deportations are carried out,
  - o they do not take place summarily, but would-be deportees are given an opportunity to contest the deportation before an independent tribunal.
  - o those ordered deported are given an opportunity to take care of their financial and personal affairs before leaving the country.
  - o the deportations are conducted in a human manner, including by ensuring that any detention does not involve overcrowding or inadequate food, shelter or medical care, and by ensuring that those deported are not left in dangerous areas or abandoned without adequate provisions.

- o pending deportation, all "protected persons" under the Fourth Geneva Convention and Protocol I (including all Bedoons, Palestinians and Iraqis) should either be permitted to work or support should be given to their dependent families.

#### IV. On Collective Punishment of the Bedoon, the Iraqi and the Palestinian Communities:

Middle East Watch calls on the Kuwaiti government must stop the collective punishment of these communities, specifically by:

- o Providing the Bedoon, the Iraqi and the Palestinian communities with protection against arbitrary arrest, detention and torture.
- o Immediately allowing the repatriation of the Bedoons who are stranded in Iraq and in the displaced persons camp at the Abdali border post.
- o Remove all barriers to employment by legal residents of Kuwait.
- o Give back pay to foreign employees of the Kuwaiti government who have not been re-hired -- in equality with their Kuwaiti counterparts -- from August 2, 1990 until they were notified of the government's decision not to re-hire them.
- o Safeguarding all property of those who have fled Kuwait and facilitating the owners' efforts to retrieve such property.

#### V. Obligations of Other Countries in the Region:

Middle East Watch calls on:

- o Israel to allow the repatriation of former Palestinian residents of the West Bank and Gaza. It should also end the requirement that Gazan Palestinians who left Gaza via Egypt return through the same port of exit.
- o Egypt to facilitate the return of Gaza Palestinians with Egyptian travel documents to Gaza.
- o Saudi Arabia to allow passage of those who want to leave Kuwait through its territory.

#### VI. Obligations of the United States:

Middle East Watch calls on the United States, in light of its leading role in the alliance that liberated Kuwait, its substantial ongoing role in the reconstruction of Kuwait, and its vast influence over the Kuwaiti government and people, to:

- o Publicly condemn killings, disappearances and torture at the hands of Kuwaiti forces,

and urge the Kuwaiti government to bring these practices to an end, including by investigating and giving a public accounting of all cases of killing, disappearance and torture and by punishing those responsible.

- o Publicly urge the Kuwaiti government to grant new trials to all those convicted by the martial-law tribunals and to ensure that any further trials are held in accordance with international fair-trial standards.
- o Publicly urge the Kuwaiti government to cease the arbitrary detention of perceived sympathizers with the Iraqi occupation, and to end the practice of incommunicado detention.
- o Publicly urge the Kuwaiti government to stop deportations of stateless Bedoons and Palestinians, to stop the return of Iraqi refugees to Iraq, and to conduct any other deportation in accordance with Kuwait's international obligations.

#### VII. Obligations of the United Nations:

Middle East Watch calls on the United Nations, in light of its central and continuing role in the Persian Gulf crisis, to ensure that Kuwait abides by all its obligations under international human rights and humanitarian law, and to lend its firm and public support to efforts by the International Committee of the Red Cross to bring an end to violent abuses in Kuwait.

Six months after the liberation of Kuwait, the thirst to avenge the horrors of the Iraqi occupation continues to spawn a new round of human rights victims -- this time at Kuwaiti hands. In this report, Middle East Watch charges that despite the prominent role played by calls to defend human rights in rallying support for the war against Iraq, the reinstated Kuwaiti government has trampled on those rights at every turn, often with the use of violence. Murder, torture, arbitrary detention and unlawful deportation have been the tools of this campaign of vengeance.

The pretext for these abuses is a government-inspired quest to root out those who collaborated with the Iraqi occupiers and to restructure Kuwaiti society in a fashion that is deemed more reliable politically. The victims, almost uniformly long-term residents of Kuwait, are principally Palestinians, Iraqis and the stateless Arabs known as Bedoons.

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